House of Commons
CANADA

Standing Committee on Citizenship and Immigration

CIMM • NUMBER 012 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, May 4, 2010

Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (1530)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon. This is meeting number 12 of the Standing Committee on Citizenship and Immigration. Today is Tuesday, May 4, 2010.

The orders of the day are pursuant to the order of reference of Thursday, April 29, 2010. We are dealing with Bill C-11, An Act to amend the Immigration and Refugee Protection Act and the Federal Courts Act.

This is the first day of our hearings, and we have appearing before us the Honourable Jason Kenney, who is the Minister of Citizenship, Immigration and Multiculturalism. He will be present for the first hour of our session, and he has a presentation to make to the committee. After that, as you know, Minister, I'm sure some of the committee members will have one or two questions for you.

Hon. Jason Kenney (Minister of Citizenship, Immigration and Multiculturalism): Really? I'm surprised.

The Chair: So welcome, and thank you for coming. I think this is your first bill, so the best of luck to you.

Ms. Olivia Chow (Trinity—Spadina, NDP): Mr. Chair, a point of order.

The Chair: A point of order, Ms. Chow.

Ms. Olivia Chow: Do you not need the committee to approve the subcommittee recommendation in front of us so that we—

The Chair: Yes, that's coming at the end of the meeting.

Ms. Olivia Chow: Should we not make the agreement that we're going to be studying this bill before the minister speaks to the bill?

Normally I would think that you need this committee to say, yes, Bill C-11 is properly in front of us and therefore the minister will be speaking, and then later on we'll have hearings, etc. I would think that in terms of procedure—correct me if I am wrong, Mr. Chair—you would need to have this bill properly in front of this committee prior to proceeding with it. I thought that was the reason why we had a subcommittee meeting prior to this meeting. Should we not adopt that—

The Chair: As you know, Ms. Chow, it was agreed that this bill would be heard, and that whatever this committee was reviewing would stop and we'd review this bill immediately. That was in the work plan and we are now doing that. We're stopping immediately.

As you know the custom of this place—as with most jurisdictions in this country—when a bill is introduced and comes to a committee, the minister for that particular ministry comes to the committee and briefs us as to what the bill is all about, along with his staff. That is what he is going to do now.

As for the rest of it, you're quite right, the subcommittee did discuss these matters and all the other matters, and that will be discussed later in this meeting. The reason why it's on later in this meeting is because I think we all want to hear what the minister is going to say, and we don't want to delay that.

So we'll proceed.

Minister, thank you very much for coming.

Hon. Jason Kenney: Thank you, Chairman.

I'm quite excited to be here, to be working with all of my colleagues on what is a critically important piece of legislation that constitutes part of a broader package to bring balanced reform back to Canada's asylum system.

These balanced reforms will result in bona fide refugees getting faster protection in Canada, much faster than is currently the case, while those who seek to abuse our country's generosity would also, on the other side, be removed much more quickly. These reforms would also enhance the fairness of our system and would ensure that the asylum system actually exceeds our domestic and international legal obligations.

Chairman, as part of the package, we are also proposing to expand our refugee resettlement programs and increase the number of UN refugees and others, who are often living in camps or urban slums and are victims of conflict and ethnic cleansing...we would increase our welcome to those kinds of individuals by some 20%, or 2,500 individuals. We would also increase support for the refugee assistance program for the successful integration of government-assisted refugees by some 20%, the first time that program has been increased in a decade.

● (1535)

[*Translation*]

In essence, the Balanced Refugee Reform Act focuses on improving our asylum system. The act would introduce a new information gathering interview at the independent Immigration and Refugee Board, would provide for a hearing within 60 days, as compared to the current 19 months, and would also introduce a new refugee appeal division, something refugee advocates have been requesting for a long time.

I would be remiss at this point not to point out the extraordinary and admirable efforts made by our colleague Mr. St-Cyr. I know he was disappointed about the failure of his bill. However, there is finally an appeal section, which is even better than what was provided by the legislation in 2002.

This new appeal division would provide most claimants with a second chance, an opportunity to introduce new evidence about their claim and to do so in an oral hearing, if necessary. And, significantly, Mr. Chairman, the bill would make it possible to remove those who would abuse our system within a year of their final IRB decision.

Bill C-11 would also put in place authority to develop a list of safe countries of origin. Because I recognize that there has been general concern over this issue, I wish to focus my remarks today on the issue of safe countries of origin.

While I referred last week in the House to our current number one country for asylum claims, and the 97% of claimants who withdrew or abandoned their claims, there have been similar spikes in claims from other countries over the past 25 years. I am referring here to Portugal, Chile, Costa Rica, Hungary in 2002, Czechoslovakia in 1997. Each time, the government, be it Conservative or Liberal, imposed visas following spikes in asylum requests from democratic countries, which were almost all denied by the IRB.

[*English*]

A safe country of origin would be a country that is a principal source of refugee claims, the overwhelming majority of which are unfounded. These two criteria would be the starting point for even considering whether to review a country for possible inclusion on the list. There's nothing arbitrary about the process we propose. Countries on the list would be chosen in a way that is fair, objective, transparent, and reported to Parliament. They would be placed on the list only after a thorough assessment based on objective criteria.

Such countries would have a human rights record whereby individuals would be offered protection against persecution, as the convention says, for reasons of race, religion, nationality, political opinion, or membership in a particular social group, and whereby persons would not face the risk of torture or death. This assessment would draw on publicly available reporting and analysis from a wide range of independent sources, including NGOs on human rights.

An advisory panel, including representatives from several government departments, would be established to provide advice on designations and advice to the minister. Input and advice would also be sought from the UN High Commissioner for Refugees. The panel would also provide submissions recommending removal of a country at any time.

The list of countries would be short, with probably no more than a handful of countries on it at any given time. If you look at the current statistics, only a handful of countries that have a significant number of claims, the overwhelming majority of which are unfounded, would even be considered. The independent panel would then apply the qualitative assessment with respect to human rights practices and the protection of individuals. This is very important, because there are some misconceptions about this. All eligible refugee claimants, including those from designated safe countries, would continue to receive a full oral hearing before an independent decision-maker at the IRB, as they do under the current system, and would continue to have access to the Federal Court. We would continue to exceed our charter and international legal obligations with respect to claimants coming from designated safe countries.

While claimants from such countries of origin would still be able to seek judicial review, as I've said, they would of course not have access to the new RAD. This is because, Mr. Chairman, for the handful of typically democratic and rights-respecting countries from which we receive huge waves of unfounded claims, claims that are not happening spontaneously but are very often organized, we need some type of tool to accelerate the process, as most of the western European asylum systems have, short of having to resort to the blunt instrument of visa imposition, which successive governments of different parties have had to do. As I mentioned, most western European asylum systems have for consideration a country designation process to accelerate claims from safe countries. Mr. Guterres, the UN High Commissioner, said here in Ottawa that, “There are indeed safe countries of origin. There are indeed countries in which there is a presumption that refugee claims will probably not be as strong as in other countries.”

I should mention, parenthetically, that for several years he was Prime Minister of Portugal, where they have a very strong SCO system.

● (1540)

[*Translation*]

Mr. Chairman, I recognize that my parliamentary colleagues have also expressed concern about this aspect of my proposals, and that is why I am here today. I want to hear from members of the standing committee on this issue. I am extending a hand of openness toward my colleagues to modify the bill to address concerns. I am prepared to discuss the matter in good faith and transparency.

[*English*]

Colleagues, the safe country of origin is a critical tool to manage a spike in claims from countries that observe international human rights norms and obligations and that protect their citizens. The option is not to have a SCO process in the reformed asylum system or nothing at all; the option is to have that as a tool to deal with these waves of unfounded claims or to have access to one tool only, which is the imposition of a visa. I think it's important to keep that in mind.

I'm pleased to see how well these reforms have been received.

The Globe and Mail editorialized, and I quote:

> Canada has a crying need for a revamped refugee-determination system, and it is to the credit of the...government that in a minority Parliament it has crafted a bold set of proposals that are fair and respect due process, while also seeking to deter those who would play this country for fools.

The *Toronto Star* endorsed these reforms, saying that this government “...deserves credit for showing the political will to act on an issue ducked” in the past.

The Montreal *Gazette* wrote that “Bill C-11...is a solid and sensible attempt...to kick-start a system that is wallowing in disarray” and that it “is a reform whose time has come”.

Experts like Peter Showler, former chair of the IRB and head of the refugee policy forum at the U of O, said, “It is even more difficult to design an entire refugee claim that is both fast and fair. The...government has done just that....”

But most importantly, Canadians support these measures by an overwhelming majority. By four to one, Canadians say that “...more needs to be done to quickly remove from Canada people whose refugee claims are unfounded and rejected”. Eighty-four percent of Canadians say that measures should be taken to reform the refugee system. And “81 per cent agreed that 'all refugee claims should be dealt with more quickly so that genuine refugees can settle in Canada faster and bogus claimants be sent home more quickly'”. This is according to a Decima Research poll.

Mr. Chairman, I want to close by emphasizing this.

[*Translation*]

I must say the amendments I am putting forward would help us maintain Canada's noble humanitarian tradition as it will allow for the protection of those that are persecuted while expediting the removal of individuals who do not need Canada's protection.

[*English*]

In closing, Mr. Chairman, I need to emphasize that should this bill not succeed in getting parliamentary consensus and being adopted, we will miss, frankly, an historic opportunity. I think everyone involved in this system, all of its observers, has recognized for a long time that there were some serious dysfunctionalities within our asylum system. It's not working well enough for bona fide victims of persecution. It's working too well, one could say, for those who come here who don't need our protection and who are able to stay for several years. It's not working for taxpayers.

It needs to be reformed, and if we want to get a refugee appeal division in place, if we want to be able to allocate more resources to resettle more of those who are in dire straits around the world, through our 20% increase in resettlement under the assistance program, if we want faster protection for bona fide refugees, if we want a tool that can help us to consider avoiding the imposition of visas in the future that are injurious to our diplomatic and commercial relations, if we want all of these things, Mr. Chairman, then I submit that this is a sound and balanced package that can be supported by all of those who believe in Canada's humanitarian tradition as a place of refuge.

I am happy to take your questions.

● (1545)

The Chair: Thank you, Mr. Minister, for your presentation. We do have some questions.

Mr. Bevilacqua has the floor.

Hon. Maurizio Bevilacqua (Vaughan, Lib.): Thank you very much, Mr. Chair. I will be splitting my time with the honourable member from Bourassa.

Minister, as you know, we will be listening to many witnesses in the coming days, and we will do our best to listen to as many groups as possible to get an assessment of what they believe is the right course of action for our country as it relates to the changes you propose.

Minister, during second reading I asked whether you were open to further measures to increase the transparency and the accountability of the designated country of origin process. You responded by saying that you are open to reasonable amendments at the committee stage, and enough factors are still missing from the bill that would make designated country of origin provision transparent and accountable.

First, I would like to suggest that the word “safe” appear in the legislation. Much more detail, of course, is required about what criteria you would use to determine whether to designate a country as safe. An amendment should consider whether a country is a signatory to relevant international human rights instruments and its human rights record with respect to the same. The amendment should also consider the availability in the country for seeking state protection and redress.

You have said that the designated country of origin list should not be an exhaustive one. In that case, you must include criteria that focus on how countries will in fact be considered for designation. In this regard, I would suggest that these criteria should include a combination of the volume of claims from that country and the associated acceptance rate at the IRB for that country.

I also think it would be of great assistance to the committee's deliberations on the safe country issue if the minister, you, were to bring the draft regulations to the committee that describe the designation process in more detail.

Essentially, Minister, will you commit to accepting these factors for an amendment and to bring draft regulations to the committee?

Hon. Jason Kenney: Thank you, Mr. Chair, for that constructive question from Mr. Bevilacqua.

I did indicate indeed at second reading my openness to an amendment that would incorporate some of these principles. I didn't hear anything to which I would object in the parameters that Mr. Bevilacqua has outlined for a possible amendment to the bill.

I do agree that there should be more detail in the bill than currently is the case with respect to both the criteria for designation of safe countries and clear transparency of the process, which we should also have. The answer is yes, I would be prepared to recommend government support for an amendment that includes those criteria that include reference to “safe” as a principle; to the numeric criteria, such as a country that is a large source of asylum claims, the vast majority of which are unfounded; and the qualitative criteria, including compliance with the various relevant international human rights instruments.

I would also be prepared to table, as I have indicated to a number of members of this committee, by way of a court letter, draft regulations on the process for designation. Now, I have to just put a caveat here. Obviously the cabinet process exists for pre-publication, for pre-gazetting, and public commentary prior to final implementation. I can't completely pre-determine the outcome of the public commentary, but we will endeavour, as a department, to share our draft suggested regulations for comments from this committee.

There is just one fly in the ointment, which is that the draft regulations would be based on the amendment that presumably will be adopted by the committee. I'd like to hear from the committee as to when would be the optimal time to present draft regulations that would define the process for designating safe countries.

But long story short, yes.

● (1550)

The Chair: I'm sorry, Mr. Coderre; you have two minutes. I apologize.

Hon. Denis Coderre (Bourassa, Lib.): You're sorry I only have two minutes?

The Chair: That's all you have.

[*Translation*]

Hon. Denis Coderre: Minister, I have experienced exactly what you are experiencing. I also issued visas. Within the Canadian system, consistent with the values inherent in the immigration system, we must draw a distinction, during this process, between granting authority to officials—and I was on the front lines in this regard—and the issue of appeals to the IRB. That is one thing.

I would however like us to discuss safe countries. I was the first to negotiate the Canada-U.S. Safe Third Country Agreement, in cooperation with the United Nations High Commissioner for Refugees. When we start saying that a country is safe it means that we're taking away that primordial value, in the area of immigration, in Canada, and each case loses its specificity.

For instance, if, for a host of reasons, an individual is harassed in a given country because he is homosexual and you say that this country is safe, from that point on you are sending out a message that every person coming out of that country is safe. Therefore the option to help someone on a humanitarian basis no longer exists. We need more transparency.

I personally, as a former minister of Immigration, object to the idea of labelling people based on the country they're from. I think we need to draw a distinction between a visa... In fact, perhaps we should say that there should be visas issued for each country, if we follow our logic. We need to say that in considering each specific case, regardless of where it is from, there is a reality people are facing.

I would like to quickly address the final point, Minister—

[*English*]

The Chair: Mr. Coderre, I'm going to let him answer the question, but your time has already expired.

Hon. Denis Coderre: Thank you.

[*Translation*]

Hon. Jason Kenney: Regarding the decision made by officials, I should point out that we are dealing with highly-trained IRB officials. It is the same system you yourself, Mr. Coderre, set up for the immigration section of the IRB. It is exactly the same thing, and I have confidence in this section. The system is indeed the same as what exists in most Western European asylum systems.

Regarding the safe countries, Mr. Coderre, I should remind you that, when you were minister, you negotiated the Canada-U.S. Safe Third Country Agreement in a very responsible way. The agreement stated that we would not accept asylum requests from citizens from other countries travelling through the United States. You established a principle that goes far beyond the designation of safe third countries here, because we allow—

[*English*]

The Chair: Go ahead, Minister.

The Chair: We have a point of order, Mr. Minister.

Mr. Coderre, you have a point of order. Stop the clock.

[*Translation*]

Hon. Denis Coderre: With all due respect, Mr. Chairman, the Canada-U.S. Third Country Agreement included exemptions. It allowed for an assessment based on the value and individuality of each case. That is why we did not generalize.

[*English*]

The Chair: You know, I don't think that's a point of order, and we're way over time. I'm going to move on to Monsieur St-Cyr, and you can pick this up at another time.

[*Translation*]

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

And I thank you, Mr. Kenney, especially for your comments regarding the refugee appeal section. It is true that I worked hard on that. Honestly, I am pleased to find it in the bill and I note that, indeed you are right, there have been enhancements in the version which is currently included in the bill that has not yet been passed.

That said, I am disappointed that this section does not apply for all cases. In my opinion, the very nature of an appeal section is to ensure there are no errors in the first instance. There is no way of knowing that until one appeals a decision.

I know that you probably do not like this, but I will try to simulate a case, to consider a hypothetical case under this new bill. Let us assume that someone arrives here, asks for refugee protection and, in the opinion of the department, is clearly not a genuine refugee or someone who meets the definition of a refugee. Assuming that an official processing the case likes the individual and decides to grant him the status, could you then consider using the authority provided in the new bill to appeal the decision and reverse the first decision granting refugee status? Because the minister may also appeal a decision.

● (1555)

Hon. Jason Kenney: Our reforms provide for an increase in appeals on behalf of the minister's representatives before the Refugee Appeal Division, and potentially before the Federal Court. There will be additional resources for greater legal action in specific cases.

Mr. Thierry St-Cyr: If I understand you correctly, even the minister in some cases could appeal a refugee request that has been granted, to have it overturned.

Hon. Jason Kenney: We are adding resources so that government lawyers can make interventions with the decision-makers at the Refugee Appeal Division and Federal Court. If there are significant cases, with long-term consequences for refugee policies—

Mr. Thierry St-Cyr: There are provisions, therefore, for the minister to file appeals. That is because you might think that, in certain cases, it might be appropriate for the minister to appeal a decision.

Hon. Jason Kenney: That is something we already do. Sometimes, we ask the Federal Court to review IRB decisions, but—

Mr. Thierry St-Cyr: I am trying to understand why, in general, you think the minister should have the right to appeal certain decisions, but you are withdrawing that right in cases of people who would come from designated safe countries of origin. Would it not be more relevant, on the contrary, because, as you claim, people who come from those countries are less likely to be actual refugees? Why are you removing the power to appeal a favourable decision?

Hon. Jason Kenney: First of all,

[*English*]

we don't take away

[*Translation*]

a right of appeal that exists in the current system for claimants from designated safe countries of origin, because they will still have access to the Federal Court. That is the case today, and that is over and above our obligations under the Canadian Charter of Rights and Freedoms, but—

Mr. Thierry St-Cyr: I am referring to the Refugee Appeal Division.

Hon. Jason Kenney: Let us talk about that! Mr. Chair, I must point out that a number of Western European countries, including France, Germany and Ireland, have adopted measures to speed up the processing of refugee claims from such countries, and—

Mr. Thierry St-Cyr: Minister, you have had the opportunity to present your arguments. I am simply trying to understand the logic behind all this. Obviously, refugee advocates want refugees to have the right to appeal. That is one thing. You have included provisions so that you, the minister, can file appeals to the Refugee Appeal Division. If you added that provision, it is because you foresaw cases where that might be relevant. Why does that provision not extend to the safe countries? You are preventing yourself from appealing favourable decisions concerning people from designated safe countries of origin, when you yourself have said that they are most likely not actual refugees. That is a contradiction.

Hon. Jason Kenney: There is nothing in the reform that removes such a right of appeal, because that right simply does not exist. We are adding another legal process for the vast majority of refugee claimants, with the exception of people from countries where most cases—I am talking about 90%—are dismissed by the IRB.

Mr. Thierry St-Cyr: If a person from one of those countries is accepted, does the bill allow you to appeal that decision?

Hon. Jason Kenney: Refugees from designated safe countries of origin whose cases are dismissed—

Mr. Thierry St-Cyr: If they are accepted—

Hon. Jason Kenney: — will not—

Mr. Thierry St-Cyr: — will you be able to appeal?

[*English*]

The Chair: We have to have one person speaking at a time.

[*Translation*]

Hon. Jason Kenney: They will have the right to appeal to the Federal Court, but not to the Refugee Appeal Division.

● (1600)

Mr. Thierry St-Cyr: I am asking if you, the minister, may appeal to the Refugee Appeal Division if someone is accepted?

Hon. Jason Kenney: Mr. Morton, from our legal services, might provide you with a more satisfactory answer.

[*English*]

Mr. Luke Morton (Senior Legal Counsel, Manager, Refugee Legal Team, Legal Services, Department of Citizenship and Immigration): I would just reiterate what the minister has said. The authority is there, as it is today, that the government can seek a judicial review.

[*Translation*]

Mr. Thierry St-Cyr: It is a simple question. Let us suppose that someone is accepted at the first level. Can the minister challenge the decision before the Refugee Appeal Division? I am not asking you for a philosophical opinion, I am asking you about a provision in the bill. Is that permitted or not?

[*English*]

Mr. Luke Morton: Yes, the minister can appeal.

[*Translation*]

Mr. Thierry St-Cyr: In the case of a person from a designated country?

[*English*]

Mr. Luke Morton: No. I'm sorry.

[*Translation*]

Mr. Thierry St-Cyr: There you have it. There is no way to appeal the case of a person from a designated country. Therefore, according to this bill, the minister cannot appeal a decision to allow a person from a designated country to remain in Canada.

That is rather paradoxical, since the minister claims that legitimate refugees are unlikely to come from those countries. Is that not an obvious contradiction?

Hon. Jason Kenney: In a hypothetical case like that, the minister can file an appeal or a request for authorization with the Federal Court of Canada, but not with the Refugee Appeal Division.

[*English*]

The Chair: That's it.

Go ahead, Ms. Chow.

Ms. Olivia Chow: Thank you, Mr. Chair.

Just to you, I want to formally say that I now have the fourth report in front of me, saying that the committee accord priority in its work to consider that Bill C-11—

The Chair: Ms. Chow—

Ms. Olivia Chow: I'm coming to a question—

The Chair: No, you're not going to come to a question—

Ms. Olivia Chow: An act to amend the immigration—

The Chair: Order. Ms. Chow—

Ms. Olivia Chow: That Bill C-11—

The Chair: Ms. Chow, you are talking about something that was dealt with in camera, and it's most inappropriate for you to deal with something that was in camera. I suggest you wait until that comes up for the agenda.

Ms. Olivia Chow: Okay. We are now dealing with Bill C-11 without having an approval for dealing with Bill C-11. I just want to say that very clearly.

The Chair: Thank you.

Your question is to the minister.

Ms. Olivia Chow: It's a bit bizarre that you are basically violating the rights and privileges of a member of Parliament, because that was the process.

The Chair: Ms. Chow, I am not, and you are free to ask questions of the minister.

Ms. Olivia Chow: We've done that one. I will go to the minister and ask him a question as to what is in front of us, assuming we are now obviously dealing with Bill C-11.

If this committee chooses to delete “safe countries of origin” and send the bill back to the House, would you accept that, if that was what the committee chose to do? If that happens, there would still be the fast-tracking. There would still be the establishment of the immigration appeal division. You would have all of the various items still in front of the House, minus the safe countries of origin.

Hon. Jason Kenney: I would be inclined at this point to answer in the negative, Ms. Chow.

This package is very delicately balanced. There are many different parts, all intricately connected. One of the principal dysfunctionalities in the current system is the openness to abuse from these waves of unfounded claims from democratic countries that respect rights. We need a tool to deal with that problem. If we don't deal with it, we will see these waves repeated in the future, leading to backlogs and longer processing times, which will undermine the entire architecture of the new system.

We see this as integral to the overall balance of the package, as do the western Europeans.

Ms. Olivia Chow: You mentioned that 97% of the Hungarian refugees' claims have been withdrawn or abandoned. I actually looked it up, and you said it several times in different places.

I noticed that in 2009, 259 Hungarians withdrew or abandoned their claims, and 2,440 Hungarians made claims in 2009. It is clearly not 97%, so where could you possibly get this 97%? We see right now, since there's a long backlog on the hearings, that 2,434 claims are pending. Of the 259 withdrawn...about 204 withdrew their claims, so it's not 90%.

● (1605)

Hon. Jason Kenney: Ms. Chow, a finalized claim is defined as one that is either withdrawn or abandoned, or else one on which a decision is made by the IRB. Of the finalized Hungarian claims last year, 97% were either abandoned or withdrawn. Of the 267 that went to decisions at the IRB, three were accepted as having a well-founded fear of persecution.

Your point that the inventory moves slowly is well taken, but the ratios are staying the same; for January and February of this year, we continue to see a massively high withdrawal and abandonment rate and an extraordinarily low acceptance rate.

Ms. Olivia Chow: The first hearing is eight days. It's the interview and then the hearings. But you can't get legal aid within eight days—in Ontario anyway.

So even though you have said that you would crack down and legislate on the whole issue of unscrupulous consultants—we all agree that we have to crack down on these folks—if a claimant can't get a legal aid lawyer because he can't get legal aid that quickly... these folks are going to turn to the unscrupulous consultants, some of them, because of the speed on the front end.

Have you considered saying that everyone who is going to be represented in this matter must be either a lawyer or legislated...by somebody? That's so your staff would not be considering people who are being represented by folks who may have no credibility—

Hon. Jason Kenney: With respect to the eight-day proposed timeline for triage interviews, I need to emphasize that this is not a confrontational, adversarial context, nor is it a context where somebody is sitting down in front of an agent of the CBSA where they might feel some degree of hostility. This is in front of a highly trained public servant at the IRB. The idea is to allow the claimant to have an opportunity to combine the key high-level elements of the claim in a friendly environment. If there are signs of trauma, if there are indications that critical evidence won't be available, the decision-maker would have the capacity to recommend a hearing at a later date than 60 days. If the claimant wants, counsel would be able to be present.

Ms. Olivia Chow: But they don't have to have counsel, right?

Hon. Jason Kenney: No—

Ms. Olivia Chow: They could challenge it in court, saying "I'm not being represented by counsel and therefore my information that's given to the staff is not admissible because I have not given the right to counsel." Could they not say that? If they say that, it will end up wasting a lot more time—

Hon. Jason Kenney: No one is required to have counsel. I should remind you we are talking about administrative proceedings; it is not a criminal proceeding. Moreover, we're talking about an interview that is simply a more efficient and wholesome way of allowing the person to provide the information they otherwise do over the course of a month in a personal information form.

Right now, Ms. Chow, I should tell you that many claimants arrive at a port of entry—I've seen this myself—and they're taken into a holding room. A CBSA agent sits down and starts asking them about the nature of their claim. There's no opportunity for counsel or anyone there. I should also say that the nature of the information provided to the triage officer will not be used prejudicially against the client when they get to their hearing.

But in terms of these timelines, actually the timelines we're proposing are generally slower than those among our comparable peer democracies. In Ireland, it's 17 to 20 days for the final decision. In the Netherlands, it's 48 days for safe country claimants and six months maximum for non-safe country claimants. In New Zealand, it's 13 weeks. The United States has a target of 60 days. It's 90 days in Australia from the time of application to the hearing and the decision on the actual claim.

So we have to be mindful, when we're dealing with a market of people who facilitate false claims, that they're going to choose countries that move more slowly to advise their clients to go to. We must be mindful of the international precedence when we are selecting our timelines here.

The Chair: Thank you, Mr. Minister.

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Mr. Chair.

Thank you, Minister. I have a couple of questions.

Ms. Chow has touched on a couple of issues that I would consider part of the major elements of reform.

Mr. St-Cyr actually touched on one that I'd like to get some further perspective on from you. That is the whole new refugee appeal division. I know you didn't quite get a chance to respond within the seven minutes. I thought you could expand a little more in terms of the effort the ministry went to, to set this process up and to make sure it did play a major role in the legislation itself.

● (1610)

Hon. Jason Kenney: When Mr. Coderre was minister, and he was followed by Ms. Sgro and Mr. Volpe—they all expressed their sincere, I believe, intention to implement the RAD, but they all said it had to happen in the context of other broader streamlining in the system. I have all the quotes, and I agree 100% with what my predecessors said at the time. They were in a difficult bind, because it's not easy to come forward with a comprehensive but balanced reform of the asylum system. It is not easy, believe me. I've been working on this, burning the midnight oil for a year and a half on the policy details here, and this is something that department officials have been working on, frankly, for years, as Mr. Coderre will well know.

The point is this. Everyone has wanted to bring in an appeal division, but within the context of streamlining, and that's what we're able to achieve here. Through the moratoria on post-claim recourses for one year, through the faster first-level decision, and thanks to faster removal at the back end of the system, we believe we can introduce this additional level of administrative fairness in the refugee appeal division without further burdening an overburdened system.

I want to underscore that the refugee appeal division foreseen in the Immigration and Refugee Protection Act 2003, and proposed, for instance, in Mr. St-Cyr's private member's bill, does not actually include, as does the RAD in Bill C-11, the ability to present new evidence and in certain cases to have an oral hearing before the appeal division decision-maker. This is an improved RAD. It's an additional level of administrative fairness, but it's not going to happen if we don't achieve the other streamlining in the system that the package speaks to.

Mr. Rick Dykstra: One of the things you did—and you mentioned it in terms of burning the midnight oil—was to travel across the country once the introduction of Bill C-11 was brought forward by you in the House, and you went from one side to the other. I'm wondering if you can comment on some of the reactions you received in terms of folks you met, whether they be stakeholders, whether they be media, whether they be those who may come here and actually be witnesses. Could you tell us the reaction you've received in terms of dealing directly with people on this?

Hon. Jason Kenney: To be absolutely honest, I was not expecting the kind of positive response we got, because this is such a difficult issue, with strongly held views. But I think there's a pretty broad consensus that something needs to be done.

This is an honest, balanced effort to achieve that, which is why every single newspaper editorial I've seen, with one exception—I think we have 15 or 20 here—from the *Toronto Star* to the *National Post*, from the *Halifax Chronicle Herald* to the *Victoria Times - Colonist*, have essentially endorsed the package, as have key stakeholders.

I've quoted one, but I see here the coordinator of the Catholic Immigration Society, Madame Godbout, saying, "I am strongly in support of stopping the abuse of the inland refugee determination system."

I have the Victoria Immigrant and Refugee Centre Society saying, "The changes to the refugee system proposed by the...government are a big step in the right direction."

The Chinese Women's Association of Toronto says, "I am writing you to support your announcement of the refugee reform. That is good news for the Chinese community."

I'd be happy to table the pages and pages of endorsements from settlement organizations, ethnocultural organizations, refugee policy experts, and media commentators. I think this reflects a pretty broad consensus. Now, that's not to dismiss the fact that there are people with legitimate concerns that we will work through here at the committee.

Mr. Rick Dykstra: It would certainly be helpful if you were to table those for all of us.

How much time do I have left, Chair?

The Chair: You have a couple of minutes left.

Mr. Rick Dykstra: Thank you.

At the beginning of your remarks you briefly touched on the need for change, and one of those changes relates to the backlog we face as a country, as a ministry, and as government. Perhaps you could remind folks how we got here with respect to how the backlog has increased to the point it has, and how we'll actually be able to put ourselves in a position of reduction over the next period of years if we pass this legislation.

● (1615)

Hon. Jason Kenney: I actually think this is an important issue. It came up at almost every opposition speech at second reading, and understandably so.

There is this ridiculous accusation from some people that the government.... I've read these ridiculous articles that say the government planned a crisis in the system by building up this big backlog. Look, the reforms are necessary in large part because large backlogs have been a permanent feature of this asylum system for well over a decade. The average size of the backlog of pending asylum claims before the IRB was 40,000 in the past decade alone. At one point, under the previous Liberal government, it was up to 52,000.

The previous government made some sensible efforts to try to reduce this by injecting short-term resources into the IRB and the CBSA. They didn't work. They worked in the short term to reduce the backlog, for example, down to 20,000. But then it just starts going back up again.

This is the story of our current, frankly broken, refugee system. It is so slow moving and so cumbersome that it creates a vicious cycle. The slower moving it is, the greater the incentive for false claimants to enter the system seeking to immigrate to Canada through the back door of the asylum system. And then the backlogs get bigger.

Now some have said that all we need to do is maintain the current system but spend more and speed things up. Bill Clinton once said that one definition of insanity is repeating the same thing over and over again, expecting a different outcome. I think it would be a disservice to Canadian taxpayers, to refugees, and to the public confidence in our asylum system if we were simply to dump more money—and this is what we've done in the past—without fixing the architecture of the system in a balanced way, which is what we seek to do.

When our government came to office, we inherited a 20,000-person backlog. Then, between 2006 and 2008 we saw a 60% increase in the number of claims. Altogether, since we took office, there have been about 20,000 more claims made than what is the capacity of the fully funded, fully staffed IRB to finalize decisions, which over four years would be 100,000 finalizations, or 25,000 per year.

It is true that part of the current backlog—and I admit this—is attributable to a short-term period of vacancies on the IRB as the government was moving to adopt a new and more rigorous pre-screening process. I'm pleased to say that it's working. Since I became minister, I have done 99 appointments or re-appointments. The RPD and the IRB are at 99% occupancy. And we're now beginning to turn the corner on the backlog, thanks in part to the visa impositions last year. That was a difficult decision, but we now finally have a surplus, if you will, of finalizations over claims made. We're starting to turn the corner, but we won't really be able to turn the corner in a significant way without such reforms.

The Chair: Mr. Coderre has five minutes.

[*Translation*]

Hon. Denis Coderre: Minister, I think that what you are trying to have passed is something of an omnibus bill.

I am all for changing the process. Besides, that is something we both have already discussed. As for making sure that we do not weigh down the administrative process, while maintaining the right to a hearing, and eventually an appeal, that is something I fully agree with, as I told you at the outset. However, in trying to make such far-reaching changes, you might go from being the Minister of Citizenship, Immigration and Multiculturalism, to being the Minister of Labelling. This all appears to be a labelling exercise.

In trying to manage population movements—speaking in practical terms— we are confronted by a number of facts. You know that all ministers of Immigration have imposed visas, which is quite normal and correct. However, ministers of Immigration should never give up their power to take exceptional measures when need be. The concept of “safe countries”, would create two systems: one intended for people from safe countries and another for people from countries that are not considered as such. That would undermine our distinctively Canadian system, which recognizes that each case is specific and unique.

You currently have regulatory powers that allow you to effectively manage cases of abuse. If this were a bill to improve the process, I would support you. I think that would be a good thing. We indeed have to cut down on as much legal quibbling as possible, while ensuring that people can defend themselves appropriately. I have full confidence in the public servants who support you. We need customs personnel who are adequately trained and who could make the decisions concerning refugee claims, based on specific criteria, as if they had the minister's delegated authority, and all the better if refugee claimants can file appeals with the Immigration and Refugee Board, depending on the merits of their cases.

To echo the question of my colleague, Mr. St-Cyr, I do not understand why this bill removes powers from the minister, depending on whether an individual comes from a safe or unsafe country. Things could be done differently if you retained the power to make exceptions in exceptional situations, a power that has been granted to all ministers of Immigration. Our role is to achieve a balance between the established system and the power of the minister to make decisions in exceptional circumstances. If we do not do that, we might weaken our entire immigration system, which has been built up over the past decades.

You say that you are ready to bring forward amendments. Would it not have been better to retain that exceptional power in the case of safe countries, rather than abandoning those responsibilities, as this leads me to believe? I am concerned that you might decide not to file appeals to the Federal Court in exceptional circumstances involving a safe country and not submit those cases to the normal process, despite the general ability to file an appeal with the Federal Court.

● (1620)

Hon. Jason Kenney: I must point out, Mr. Chair, that we are not removing section 25 of the Immigration and Refugee Protection Act, which empowers the minister to act in exceptional cases. That section is not affected by our proposed reform.

However, I must also emphasize that many of the elements in the current legislation, which was adopted by Mr. Coderre, create distinctions among countries. The law designates source countries from which we accept refugee claims. We have a moratorium on deportation. For that, there is a list of countries established by the Minister of Public Safety on the advice of public servants. There is even a list of countries for which we grant visa exemptions. All that goes to show that we already assess countries' conditions.

As well, Mr. Coderre, I must underscore the fact that, according to our proposed reform, each refugee claim will be dealt with in a specific and unique way, on a case-by-case basis, according to its merits, by an independent and expert decision-maker at the IRB, all in accordance with the Charter of Rights and Freedoms. Decision-makers will not issue negative decisions based on the fact that claimants are nationals from designated safe countries.

There is only one exception for not granting a hearing before the IRB, and that is when claimants are U.S. nationals, and that is because of the agreement between Canada and the United States on safe third countries. That is the only exception that would prevent someone from obtaining a hearing before the IRB. If I may say so, you are the one who implemented that agreement.

The Chair: Mrs. Thi Lac, you have five minutes.

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good afternoon, Minister. I would like to thank your officials for appearing here today with you.

Can you mention a single country whose nationals are systematically rejected, 100% of the time?

Hon. Jason Kenney: I apologize, I do not understand your question.

Mrs. Ève-Mary Thaï Thi Lac: Is there a single country whose claimants are rejected, 100% of the time?

Hon. Jason Kenney: No, but there are a number of countries with a rejection rate of close to 99%. Today, the rejection rate for claimants from Hungary is nearly 100%.

● (1625)

Mrs. Ève-Mary Thaï Thi Lac: Very well.

With regard to people from Haiti, we learned last week that only nine additional cases were processed between January and March 2010 compared with the same quarter a year earlier. Your deputy minister also said that all the claims received prior to the earthquake would be completed by the end of April. We are still waiting. I wanted to know how your bill could benefit refugees who experience similar disasters. How can it help the Haitians? If this legislation were in effect, how would the situation be different? Would all of those cases have already been accepted? You promised you would speed up the process.

As I indicated, the figure is quite surprising: there were only nine cases more than the previous year, despite your promise to speed up the process. If your bill had already been adopted, how would it have made a difference for Haitians?

Hon. Jason Kenney: The IRB decided to speed up the processing of refugee claims from Haiti that were already in the system before the earthquake. They announced a number of measures to speed up the process. I would encourage you to ask for more information from president Goodman, as he will be appearing before the committee shortly.

With regard to the family sponsorship claims, we will be able to finalize all decisions concerning Haitian claims that were in the system prior to the earthquake by the end of June.

Moreover, nothing in the bill will limit access to the refugee system for people from Haiti. On the contrary, refugee claimants from Haiti who are turned down at the Refugee Protection Division will, following the reform, have access to the Refugee Appeal Division. I am sure that Haiti will never be included in the list of designated safe countries.

Mrs. Ève-Mary Thaï Thi Lac: Thank you, Minister. I am disappointed that the end of April deadline has been put off to the month of June. That is disappointing.

My second question is on consultants. Many immigration consultants currently lie to and swindle clients. Many applicants are fraudulent applicants because of the advice they get from consultants. Why does your bill not include measures to govern the consultant sector in order to reduce the number of false refugee claimants?

Hon. Jason Kenney: That is a relevant question, madam. We decided to focus on reforming the asylum processes in this bill. However, I am committed to tabling a bill in the House soon that will provide tougher regulations for immigration consultants and that will provide for further measures that will improve regulations in that sector. You are absolutely right in saying that false claimants are often encouraged by unscrupulous consultants.

Mrs. Ève-Mary Thaï Thi Lac: I will share the rest of my time with my colleague who has other questions to ask.

[*English*]

The Chair: You have one minute.

[*Translation*]

Mr. Thierry St-Cyr: Minister, with respect to designated countries, has the department considered other possible mechanisms to achieve similar ends? If so, what are those mechanisms? Why did you discount them in favour of the one you are presenting today?

Hon. Jason Kenney: I did not receive any political advice from the department on tools that could be used other than designating safe countries and requiring visas.

That said, you can consider Western European systems. Several use the safe country designation differently. In fact, in some countries a hearing is held within 48 hours if the claimant comes from a country that has been designated safe. Other countries use the tool differently. However, most countries make a distinction from the outset between certain designated countries and the vast majority of countries. What this means is that this is a very widespread tool.

● (1630)

[*English*]

The Chair: Thank you.

Mr. Minister, that concludes our time with you this afternoon. I thank you for your presentation.

Hon. Jason Kenney: I'd be happy to come back at an appropriate time, perhaps at the end of your hearings, to respond to future questions, Mr. Chairman.

The Chair: Thank you for that offer, Mr. Minister.

This committee will suspend for a few moments.

● (1630)

(Pause)

● (1635)

The Chair: We have one hour left. Well, it won't be quite an hour, because we have to deal with the subcommittee's report at perhaps a quarter after five , or something like that. I have spoken to Mr. Linklater about presentations at the outset, and unless some of you wish to say something at the outset, I think we'll jump right into questions.

Is that agreed, or did you have something to say? Maybe I'll introduce you all.

Mr. Linklater is the assistant deputy minister of strategic and program policy. With him is Peter MacDougall, director general of refugees. Mr. Luke Morton is the senior legal counsel and the manager of the refugee legal team. Jennifer Irish is the director of asylum policy program development.

Finally, Mr. Peter Hill is with the Canada Border Services Agency as the acting associate vice-president of the program branch.

We can start right into questions. I think most of you were here for the minister's presentation. Did any of you have any comments that you wished to make at the outset?

Mr. Linklater.

Mr. Les Linklater (Assistant Deputy Minister, Strategic and Program Policy, Department of Citizenship and Immigration): No, thank you, Mr. Chair. We're prepared to take questions from the committee.

The Chair: Okay.

Mr. Bevilacqua has the floor.

Hon. Maurizio Bevilacqua: Thank you very much, Mr. Chairman.

I want to take this opportunity to thank the department for all of its work, recognizing, first of all, that you're dealing with a very difficult issue, and, second, that there are some time constraints as well. We're always concerned about time constraints, especially when it comes to the administration of justice for people. That leads me to the very first question concerning the initial review process—the need for it to be procedurally sound and fair and that it not create unnecessary costs and delays.

It's an issue that I have already raised in the House, because if we don't get it right at the front end, these delays will in fact have the unintended consequence of creating a bottleneck, which is what we're trying to avoid.

I'd like to have your point of view on that.

Mr. Les Linklater: Thank you for the question, Mr. Chair.

I think the minister was correct in saying that the reforms that are being proposed here form part of a very balanced package that looks to ensure that, as Mr. Bevilacqua has said, we don't create new bottlenecks in the system, as has been the case in the last number of years. Ensuring the timeliness of decisions at the front end is critical to ensuring that those people who have a founded basis for protection from Canada are able to make their claim in a timely manner and are able to do that without being delayed unnecessarily.

As the members are probably aware, it now takes approximately 19 months for a hearing to be held at the IRB for a claimant. Under the proposed reforms, that will happen within 60 days of the triage interview, which should happen within eight days of arrival in Canada. Our view is that this should provide sufficient time for individuals to be able to provide information to IRB officials at the first instance within the eight-day triage period, as opposed to the almost 30-day period that is available now for completing the personal information form. Also, within the ensuing 60 days, there should be sufficient opportunity to engage counsel as required or if necessary and to gather additional evidence to present at the initial hearing at the refugee determination division.

With this more consistent and coherent collection of information at the front end now, we think the decision-makers at the first hearing at the refugee determination division will have better information to be able to make decisions more quickly and to speed up the processing of cases.

As the minister also mentioned, with the introduction of these streamlined approaches, there is the flexibility now to introduce a refugee appeal division, which will, within four months of a negative decision at the RPD, allow for a hearing based on the merits of the first decision. It will also allow for the introduction of new evidence, which has not been the case to date. With a negative decision there, it will allow for, with leave, appeal to the Federal Court.

● (1640)

Hon. Maurizio Bevilacqua: I've been concerned about the independence and the qualifications of the first-line decision-makers. What are your thoughts on that?

Mr. Les Linklater: I believe the question should probably be addressed more appropriately to Mr. Goodman when he appears later this week. However, I will say that we have every confidence that the public servant decision-makers who will be engaged at the refugee determination division at the IRB will have access to the information that's available to the GIC appointees who are now decision-makers. They will have access to extensive training and development to ensure that the high quality of decisions we see now from the GIC decision-makers will continue with the public servant decision-makers.

Hon. Maurizio Bevilacqua: We all want to give fair access and to respect the judicial system. We all obviously want to adhere to those fundamental values that are truly an expression of Canada's justice and legal system.

One of the concerns I have is in reference to the funding of this particular initiative—I think it's $540 million. Whenever you make such an expenditure, especially when we didn't see it in the budget, it raises concerns in many quarters. We hear about freezing departmental spending. We hear about, for example, the Canada Border Services Agency not receiving as much, and yet they're getting more money. It creates a lot of confusion in the minds of people, including parliamentarians on both sides.

I want you to comment on what kinds of safeguards we have in place to make sure that this $540 million is not part of a shell game, but rather will be directed towards the reform of this package, because we need to respect the Canadian taxpayers' dollars.

Mr. Les Linklater: Mr. Chair, I think this is an excellent question, and I'm happy to advise that as part of the program development process, the participating departments, with the supervision of the Treasury Board, will be engaging in a comprehensive evaluation of the impacts of the proposed changes three years after implementation. So departments that are participating in this initiative, and I believe there are seven, including Justice, CBSA, CIC, and others, will be at that time, during the course of the evaluation, reporting on the expenditures made to date—at year three of the reforms—to be able to then report publicly on the results achieved to date against the funding allocated and spent.

Hon. Maurizio Bevilacqua: For those who are viewing these hearings, for public interest, can you explain the timelines if this bill is successful and becomes law? In other words, it is now in committee. If it gets approved in the House, it will go to the Senate, but when does this actually take place? When is Canada going to have a new refugee system?

Mr. Les Linklater: Again, Mr. Chair, I think this is a great question, because with royal assent, there will need to be a period of implementation for CIC and IRB, CBSA, and other agencies, to prepare for the coming into force of the legislative changes and the associated regulations that will need to be developed.

As the members will appreciate, no doubt, until the bill is settled, which would mean effectively royal assent, developing the regulatory framework to support those legislative provisions can only begin in a cursory manner. So once the bill does receive royal assent, we are looking at an implementation period of anywhere from between 12 to 24 months, which will allow for the development, for example, of the regulatory regime for the IRB to develop the appropriate rules that will guide the decision-makers at the board. It will also allow for such mundane things as securing space and making sure the hiring is done and the decision-makers are trained and in place, so that when the bill does come into force there is a seamless transition from the old system to the new.

The Chair: Thank you, Mr. Linklater.

Monsieur St-Cyr.

[*Translation*]

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

I have a few somewhat technical questions so that I can understand. In section 4 where you have created a new subsection 25(1.3), you excluded certain factors used in the determination of refugee status when you are considering a permanent residency claim on humanitarian or compassionate grounds. If I understand correctly, that would apply to all individuals claiming permanent residency on humanitarian or compassionate grounds, regardless of whether or not they have gone to the IRB with a refugee claim. Have I interpreted this correctly?

Second, do you not think there is a risk of creating the opposite effect, that is that it will encourage individuals who may have requested permanent residency on humanitarian grounds to make a refugee claim instead, given that the criteria that would have helped them obtain that residency on humanitarian grounds will be explicitly excluded under subsection 25(1.3)?

● (1645)

Mr. Les Linklater: If I understand you correctly, you are asking what the criteria are for a claim for permanent residency on humanitarian or compassionate grounds.

Mr. Thierry St-Cyr: Why is the bill before us suggesting amending subsection 25(1) of the act, which deals with claims on humanitarian grounds, by adding subsection 25(1.3) in which the minister does not consider, “in examining the request of a foreign national in Canada, ...the factors that are taken into account and the determination of whether a person is a convention refugee...”?

In other words, when a claim is being processed on humanitarian grounds, any factors that could be taken into account in determining refugee status will be excluded. Why the exclusion? Do you not think there is a risk that you will get the opposite effect and encourage people who might have submitted a claim on humanitarian grounds to instead make a refugee claim?

[*English*]

Mr. Les Linklater: Thank you for the question.

Mr. Chair, this is a very complex area of immigration processing. As a result of the proposed reforms, we hope we will be able to identify the factors the member has outlined, which we refer to as “risk factors”, in the assessment of H and C applications, and to have that done as part of the refugee determination process at the RPD and/or at the RAD, as required.

Currently, our officers who do examine these H and C cases with risk are essentially being asked to look again at evidence that could have or may have been better presented at the IRB or at the RAD under the new law.

[*Translation*]

Mr. Thierry St-Cyr: I'm not sure if I expressed myself badly or if I was misunderstood. The current section 25 of the Immigration and Refugee Protection Act does not deal with refugee claimants, but rather with applications for permanent resident status on humanitarian and compassionate grounds, called HC applications.

You are proposing to amend this section by adding subsection 25 (1.3) under which factors used to determine refugee status when considering a claim on humanitarian grounds are not to be considered. Why is there this exclusion, not in the refugee claim process but in the process for applying for permanent residence on humanitarian grounds? Do you not think that will create the opposite effect from that which you want? Will it not encourage people who might otherwise apply for residency on humanitarian grounds to choose instead the process for claiming refugee status, because those criteria will be taken into account?

[*English*]

Mr. Les Linklater: We don't believe this new provision within the act will push people to make refugee claims as opposed to H and C requests for permanent residence. Effectively, what we're looking to do with the proposed changes is to consolidate the assessment of risk and comparable factors, along with the assessment of fear of persecution or harm, at the IRB. That is as opposed to doing it at the IRB in the first instance and then again at CIC, when our officers look at H and C considerations, such as length of time in the country.

[*Translation*]

Mr. Thierry St-Cyr: Yes, but those individuals making a claim under section 25 will not necessarily have been rejected by the IRB nor will they have necessarily gone through the process of applying for refugee status. They may be immigrants who live here or students who have been here on a temporary basis. Furthermore, if they have failed at the IRB level, then they will no longer be able to apply.

Therefore this isn't a linear process but rather a parallel process. Why were those criteria removed from the process?

● (1650)

Mr. Les Linklater: Those individuals whose claims were not rejected will always have access to a risk assessment before leaving Canada. We have something called in English the PRRA which ensures that all risk factors are reviewed in the cases of individuals who have not had an opportunity to present their case and its risks before the IRB.

Mr. Thierry St-Cyr: You have not convinced me that this subsection is relevant but I will ask another question.

In section 25 again, paragraph 25(1.2)(c) states that a claim cannot be made on humanitarian grounds after a claim for asylum has been rejected, withdrawn or abandoned. Several individuals told us that this restriction should not apply to those who decide to withdraw their application before a hearing has begun. Why did you not take that suggestion into account? What would be the consequences if this committee decided to amend that provision in order to allow an individual to make a claim on humanitarian grounds if that individual withdraws their asylum claim before their hearing begins?

[*English*]

Mr. Les Linklater: Thank you for the question.

Essentially, what we're looking at with this change is to ensure that individuals who have a fear of persecution or risk are channelled appropriately and go to the IRB. There may be cases, as has been pointed out, when people decide, before they have a hearing at the IRB, that they should likely have requested humanitarian and compassionate consideration. That is not foreseen in the act at this time. However, if an amendment were moved, the government would have to consider that and determine whether it was acceptable in the context of the broader reform package.

The Chair: Thank you.

We'll go to Ms. Chow.

Ms. Olivia Chow: How many more IRB workers are you seeking to hire?

Mr. Les Linklater: I believe that in the refugee determination division, the IRB would be looking to hire approximately 100 new decision-makers.

Ms. Olivia Chow: They would replace the IRB board members who are now making decisions, right?

Mr. Les Linklater: Do you mean at the front line?

Ms. Olivia Chow: Yes.

Mr. Les Linklater: Yes.

Ms. Olivia Chow: On the safe countries question, it says here that if they come from, say, England, which is a safe country, but they are originally from the Congo, they would be classified under safe countries, if England is part of the list, even though they come originally from a country that is not on the safe country list. Am I correct?

Mr. Les Linklater: When we examine the claims of individuals, it's based on their nationality. If someone is a dual national, for example, we would look at that. If someone holds a passport from a safe country, and that is the identity the person presents to the IRB for the purposes of a claim, and if that country, as I said, is designated as safe, the person would be channelled into the safe country of origin. Essentially, as the minister has said, I think during second debate and quite publicly, one of the things we would look at is whether people could avail themselves of state protection from a country that is deemed to be safe.

Ms. Olivia Chow: It's the same if the safe third country is the U.S. So if they're able to go back to the U.S., even though they are, say, from the Congo, and if the U.S. is on the safe country list—putting aside that agreement—then this person would go into a safe country stream, even though the torture and all of that really came from the Congo, for example, and not from Hungary, which may be on the list.

Mr. Les Linklater: If I understand the question correctly, Mr. Chair, it's if someone holds a passport of a country that is deemed safe by the minister, would they be channelled into the safe country stream. The answer is yes. However, they would, as the minister said very clearly, have the right to have their claim heard—

● (1655)

Ms. Olivia Chow: I know that, but they wouldn't have the right to appeal.

Mr. Les Linklater: —and have it adjudicated on its merits.

They would not have the right to appeal to the RAD, that's correct.

Ms. Olivia Chow: I find that quite unfair.

What about the new evidence? It seems that when you're doing the appeal, existing materials cannot be presented if they have already been presented during the original hearings. The IRB, by and large, would only be hearing new evidence.

What if they just want to appeal on the initial decision? That seems to be what the legislation says.

Mr. Les Linklater: In effect, an individual who receives a negative RPD decision can appeal that on any ground to the RAD.

Ms. Olivia Chow: But what they can submit—

Mr. Les Linklater: But they could also introduce new evidence to the RAD as well.

Ms. Olivia Chow: Of course, but can they introduce the older material?

Mr. Les Linklater: Yes.

Ms. Olivia Chow: So it's not just new material?

Mr. Les Linklater: Correct.

Ms. Olivia Chow: Okay.

And in terms of getting the pre-assessment review, if they are from the safe countries track and they didn't get the appeal, can they still go through PRRA, if PRRA takes more than a year, but they would be deported within a year, so you could still deport prior to a hearing?

Mr. Les Linklater: If the person is ready for removal within the one year from their last negative decision?

Ms. Olivia Chow: That's right.

Mr. Les Linklater: Yes, they would not have access to a PRRA—

Ms. Olivia Chow: To PRRA.

Mr. Les Linklater: —before they are removed from Canada.

Ms. Olivia Chow: Okay, which is a big change from what it is now.

Mr. Les Linklater: Regardless of time spent, a PRRA is accorded if someone applies for it.

Ms. Olivia Chow: Right.

Is that the same for people who are not from the safe country list? If they have been rejected in the appeal division and they are ready to be removed but PRRA takes a long time, let's say, that person would also not be able to have a hearing prior to removal?

Mr. Les Linklater: If their last negative decision, whether from the RAD or from the Federal Court, is within one year of their departure from Canada, that's correct, PRRA would not apply.

Ms. Olivia Chow: What is the current backlog? How long does it take to get a PRRA these days?

Mr. Les Linklater: I'm not sure of the timing on the backlog—perhaps my colleagues could respond—but there are about 4,000 cases awaiting PRRA.

Ms. Olivia Chow: Are you hiring more people to hear a PRRA case?

Mr. Peter MacDougall (Director General, Refugees, Department of Citizenship and Immigration): The backlog time is about nine months, but I think it's important to remember that the person would not have access to the PRRA, so the timing of how long it takes is not strictly relevant in this case.

Ms. Olivia Chow: Why?

Mr. Peter MacDougall: When a person has a negative decision of the RAD or the RPD, and they presumably go to the Federal Court, they cannot apply for or are not eligible for a PRRA during that 12-month period. It's only after that period has elapsed and they've not been removed that their access to the PRRA would be restored.

Ms. Olivia Chow: I see. So why have the PRRA there anyway, because they would never get there?

Mr. Peter MacDougall: The PRRA is not only available to failed refugee claimants, it's available to other streams of the immigration program, so those people would still have access to it.

Ms. Olivia Chow: Right. But for a refugee's claim, this is now gone, really, this PRRA access.

Mr. Peter MacDougall: Only for one year following the last negative decision at the IRB.

Ms. Olivia Chow: But if it takes more than a year to get there? Really, whatever is on paper is one thing. There's already a huge backlog. They'll probably be longer than a year. They won't be able to appeal to PRRA.

Mr. Les Linklater: During the transitional period we expect that the current backlog of PRRA requests will be run down, so as we get to implementation—

Ms. Olivia Chow: [*Inaudible—Editor*]...to run that down?

Mr. Les Linklater: No. We will able to manage within our existing resources. But as we move to the new system, there should be a significant decline in new intake because of the one-year bar.

Ms. Olivia Chow: I see.

The Chair: Thank you, Ms. Chow.

Dr. Wong.

Mrs. Alice Wong (Richmond, CPC): Thank you again for coming to the committee.

In the act itself there's another program for the assisted voluntary removal of failed claimants. It will make it easier for people to return to their country of origin, and therefore they will be more likely to leave.

My questions are twofold. The first is about the details—so that's about what. Then I have other questions about how. So tell us the details, as well as who we'll be working with and what we'll be funding them to do to help with this. Are there similar programs in other countries? If so, how does this proposal compare?

I have lumped everything together because in your presentation you might be able to touch on them all.

● (1700)

Mr. Les Linklater: Thank you for the question.

I will ask my colleague from CBSA to respond in detail.

Briefly, other countries have profited from AVR-type programs, where they've been able to partner with international organizations like the IOM to facilitate the removal of individuals by giving them incentives to leave, as opposed to having those individuals wait longer in the country where they have made asylum claims.

I'll ask Mr. Hill to respond in detail to the question.

Mr. Peter Hill (Acting Associate Vice-President, Program Branch, Canada Border Services Agency): Thank you for the question.

What's being proposed is a four-year pilot project aimed at encouraging more voluntary returns. It would essentially provide counselling to claimants throughout the refugee determination process with respect to failed claimants' rights and their obligations. For example, many people just don't realize that if they are removed from Canada, that is, if they are deported, they're banned from ever returning.

The pilot project would be delivered in partnership with an independent service provider. The pilot would be located in the greater Toronto area and would consist of two phases. The first phase would be for failed claimants who are being returned to Mexico, the Caribbean, and Central and South America. That would essentially be for the first two years of the project. The second phase—again located in Toronto—would be for failed claimants being returned to all other parts of the world.

In addition to counselling, the pilot project would provide a number of other features. For example, it would provide failed asylum claimants with a plane ticket to return home. It would provide funding up to a maximum of $2,000, to be given to the service providers who will be working to facilitate re-integration in the country of origin. The kind of support that is envisaged is educational assistance, employment assistance, and things of that nature. I want to underline that the funding would be provided to the independent service provider to administer; these funds would not be provided directly to the failed claimants. There would be strict eligibility criteria for this program, in particular, no criminality, complete adherence to reporting to the Canada Border Services Agency, complete compliance in obtaining travel documents, and there would also be a temporary bar from ever returning to Canada.

So those are the features of the program. As my colleague mentioned, other countries have very mature programs, in particular, the European countries. The U.K. has had a program along these lines for the last decade. Australia conducted national trials recently and implemented a national program in 2009.

The benefits that we anticipate from the AVR program include: more removals within the one-year timeframe as a result of the incentives to comply; cost savings, including significant cost savings with respect to enforcement activities; less detention; less complex investigations; and less escorted removals. There would also be less risk of failed claimants not appearing for removal, in view of the educational assistance and counselling that would be provided, as has been witnessed by other countries with such programs. The last feature, and perhaps one of the most important ones of the AVR program, would be the way it would facilitate failed claimants' acquisition of travel documents. Individuals would have to cooperate with the CBSA in obtaining travel documents, which has been one of the key impediments to removal.

Those essentially are the highlights of the proposed AVR program.

● (1705)

Mrs. Alice Wong: Mr. Chair, I will share my time with Mr. Young.

The Chair: Thank you.

Mr. Terence Young (Oakville, CPC): Thank you.

I'm not sure who would like to answer this question, so I'll ask it, and maybe somebody who specializes in this can speak up.

The minister made an earlier comment on the processing times in Europe, and I just wondered if you could comment on how our current processing times compare with those in Europe, and then how the proposed processing times would compare.

Mr. Les Linklater: I think Mr. MacDougall and Ms. Irish can respond.

Mr. Peter MacDougall: Mr. Chair, I'll start by saying that the proposed processing times we have are significantly more generous than those of comparable European countries, particularly for claimants in the safe country of origin category. For example, Norway processes such cases in about 48 hours. France seeks to process them in 15 days, and Portugal, as I recall, within about one week.

My colleague may have something else to add.

Mr. Terence Young: Maybe you can compare the proposed processing times under the new bill.

Mr. Peter MacDougall: All right.

Under our processing times, as the minister has mentioned, the eight-day information gathering or triage interview occurs. When a person arrives in the country or makes a claim, there are three days to determine whether that person is eligible. Eight days after that, the person would receive an interview. The hearing would be scheduled at that point within about 60 days. So the person would, in most scenarios, have a first-level decision about three months after their claim was made.

Mr. Terence Young: If someone were looking for a country to go to and were interested in jumping the queue or abusing the system or delaying things, would he or she therefore be less likely to want to come to Canada under the new processing system?

Mr. Peter MacDougall: We think it's certainly the case now that our long processing time is a draw, as the minister has mentioned, but our new timelines will deter that significantly.

Mr. Terence Young: In addition to being more fair, this process holds the potential, I would assume, to save a lot of money for taxpayers. Do you have any idea how much savings would result under the new bill in administrative costs, etc., and who would benefit the most from that?

Mr. Peter MacDougall: The proposed savings would mostly result from less time spent in the asylum system. Right now, a negative claimant spends about four and a half years in Canada. Under the new system, a failed claimant would spend approximately 20 months in Canada. Most of the cost savings, in fact virtually all of the savings, would accrue to provinces and territories, in their social services and education costs primarily. We expect that over the first five years of the system the cost savings would be up to $1.8 billion.

Mr. Terence Young: Sorry, could you say that again?

Mr. Peter MacDougall: Up to $1.8 billion.

Mr. Terence Young: Billion dollars.

Mr. Peter MacDougall: And those savings would accrue to provinces and territories.

Mr. Terence Young: Thank you.

The Chair: Thank you very much.

I think that concludes our questions of you this afternoon, Mr. Linklater, Mr. MacDougall, Mr. Morton, Mr. Hill—

[*Translation*]

Mr. Thierry St-Cyr: Mr. Chairman, according to our schedule we had until 5:30 p.m. and I know that there were other points to be considered after that but I would have one quick simple question to ask.

[*English*]

The Chair: Just a second. If you want to go another round, the Liberals have the first shot.

Are there any questions?

[*Translation*]

Hon. Denis Coderre: Mr. Linklater, we have talked a lot about visas today. I mentioned that I myself requested them when we were in government. You remember Costa Rica. How many countries on the planet are not obliged to use visas by Canada currently?

Mr. Les Linklater: I believe it's approximately 48 countries but I will have to ask my colleagues to check that.

Mr. Peter MacDougall: Yes, 47 or 48 countries do not need visas for Canada.

Hon. Denis Coderre: Fine. Have you considered a visa policy like those in other countries under which anyone coming to Canada would have to have a visa? Was that considered for immigration, as opposed to tabling a bill and deciding to monitor everything by labelling certain countries? Has any consideration been given to the possibility of Canada simply imposing a visa on everyone?

● (1710)

Mr. Les Linklater: Globally?

Hon. Denis Coderre: Yes.

Mr. Les Linklater: Not yet, but a few years ago, for example, Australia implemented that kind of system, with an exemption for New Zealand. It is something we could look at in the context of our political work, but obviously one would need the necessary infrastructure to assess each individual wanting to come into Canada each year, especially given the trade between Canada and the United States—

Hon. Denis Coderre: I understand all that. We have agreements and we can get more agreements. The first thing the minister said was that when visas are required, that allows for the orderly flow of people arriving here, does it not?

Mr. Les Linklater: Yes.

Hon. Denis Coderre: We've been talking about Hungary. If one follows the same logic, the department should be considering a global visa, and then craft specific agreements for the North American continent, or something like that. If you do that you control the flow of individuals. In actual fact, people go where they don't need a visa in order to get in. It's logical, it was like that before. If we do this, we don't need to change policy and start designating safe countries.

Have you considered this?

Mr. Les Linklater: No, not yet, given that we don't have the means to implement this type of system on a global scale. With our network abroad, a system like that would require several years of work and obviously the corresponding resources needed to implement it.

Hon. Denis Coderre: But you're discussing it?

Mr. Les Linklater: We always have discussions with our partners. Maybe at some point in the future this will be a vision we'll be able to work on. However, there is no real policy on that issue currently.

Hon. Denis Coderre: That's another step. You're considering those options and you discuss them, but have you discussed them with the minister?

Mr. Les Linklater: No. As I said, we have discussions with our partners, especially Australia and the United States. However we have not put together any policy proposal as such.

Hon. Denis Coderre: You have a safe third country agreement that has nothing to do with what's in the bill—we agree that's completely different. Under that agreement, if you go to the United States, for example, given that your country is a signatory to the Geneva Convention, you make your claim in the United States, and then you're taken back, unless there's an exception, for example if we don't have the same foreign policy as certain countries and there are exceptional measures. That is the agreement that was reached with the United Nations High Commissioner for Refugees at the time, and that I negotiated.

In the same way, if we wanted a global visa, we wouldn't have to change the policy if the main goal of the bill was a focus on process and selection of well-founded appeals, and also, if you were already able through regulations to create an orderly system or flow of people.

Mr. Les Linklater: It's an interesting concept, but you must remember that a certain proportion of claimants have already managed to obtain access to Canada through a visa or another status document. Afterwards they submit a claim.

Hon. Denis Coderre: I'm asking all these questions because ultimately the spirit of the law is just as important, if not more important, than what is written down. If the main purpose were to control...

We've always said that in Canada we have a policy that strikes a balance between openness and vigilance. We don't build walls but we do control the doors. And if we control the doors, but we completely change the principle by using a label that states that a country is safe, then what will be the initial reaction of a civil servant or board member when faced with a claimant coming from that country? They'll ask them what they're doing here. They won't believe that refugees can come from Japan, for example. That's something that the minister said at the time, among other things, when we asked him questions.

I would like to know what's hiding behind this policy. This could have been done through regulations, and you have the ability to propose that. That was already proposed to me, when I was minister.

The minister said he didn't have that option, yet it is an option. Didn't you propose it?

● (1715)

Mr. Les Linklater: In the current context of the act, what you're suggesting is a significant departure for Canada with respect to managing access to our territory.

It should be recalled that even with visas, people will have access to our system for requesting asylum, refugee protection. Furthermore, there will still be problems even with an assessment of the good faith of individuals before they come to Canada.

[*English*]

The Chair: Okay. Thank you very much again to all of you for coming. We may or may not wish you to come again, but you've been very helpful with your answers. Thank you very much.

Mr. Les Linklater: Thank you.

The Chair: We will suspend for a moment and go in camera.

[*Proceedings continue in camera*]

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