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Chair

Mr. David Tilson

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● (1815)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): This is the Standing Committee on Citizenship and Immigration, meeting number 15, on Tuesday, May 11, 2010. The committee will be sitting between 6 p.m. and 9 p.m.

Pursuant to the order of reference of Thursday, April 29, 2010, we are discussing Bill C-11, an act to amend the Immigration and Refugee Protection Act and the Federal Courts Act.

We have three witnesses with us today. The first is here in Ottawa.

Oh, there's another person there. I assume Professor Showler will introduce her.

Mr. Peter Showler (Professor, Human Rights Research and Education Centre, University of Ottawa, As an Individual): Yes, I will.

The Chair: We have Professor Peter Showler, from the Human Rights Research and Education Centre at the University of Toronto... the University of Ottawa, I apologize.

Mr. Peter Showler: Yes, that's very important.

The Chair: It is. It won't happen again.

Then there are two lawyers from Toronto joining us: Raoul Boulakia, and Mr. Lorne Waldman.

You will each have up to ten minutes to make a presentation.

We'll start with you, Professor Showler. Welcome to the committee.

Mr. Peter Showler: Thank you very much, Mr. Chairperson and members of the committee.

I would like to introduce Ms. Razmeen Joya, my research assistant. She's here simply to take notes and assist me, if that's permissible with the committee.

The Chair: We welcome everyone here.

Mr. Peter Showler: Thank you.

When you said ten minutes, Mr. Tilson, did you mean I have ten minutes to present?

The Chair: You have up to ten minutes. You don't need to take ten minutes. You can speak for one minute if you wish.

Mr. Peter Showler: I'll certainly speak longer than that, but I was told I'd have seven minutes. I'll make it a little briefer than that.

The Chair: That's fine. I don't even know how to work this clock here, so by the time you get going we'll be on our way.

Go ahead, sir.

Mr. Peter Showler: Thank you.

First of all, I want to thank the committee for the invitation to speak to you.

I'm the director of the Refugee Forum at the University of Ottawa, and in the past several years we've conducted a great deal of research, not only on the Canadian refugee system but also on other asylum systems, particularly in the other industrialized countries, and I'd be glad to respond to any questions you have in that regard.

I do want to say that I will be speaking not only as an academic but as a former refugee lawyer myself, as a former member of the Immigration and Refugee Board, and as a former chairperson of the board. I'll try to bring all of those very different perspectives to my comments and my responses to your questions.

On this notion of having a system that's balanced, that is fast and fair, every asylum system in the world talks about being fast and fair. They are both code words. “Fast” also means effective; it also means efficient. It does not just mean rapid decision-making.

Similarly, “fair” doesn't simply mean fair procedure. It also means that the decisions accurately reflect the law and the facts of particular cases. It also means that they are well-reasoned decisions with good country information and competent decision-makers.

Often the notion is that “fast” and “fair” are contradictory. My view is that it does not always have to be the case. A wonderful example is when you have well-trained and good decision-makers, not only do you get decisions that are more fair, you get decisions that are faster and more efficient, and you don't overburden your appeal system in the same way. So efficiencies can be gleaned through fair and well-framed decisions.

I do want to note that as a committee you do have a serious challenge, because this is framework legislation. Much of the important information and details are contained either in the regulations, in the Immigration and Refugee Board rules, or even in the hiring policy of the IRB. That simply presents you with a challenge, because you're considering a bill when several pieces of the puzzle you have not yet seen.

I'm going to refer to only three portions of the bill. I will say in the beginning that I publicly supported the bill when it was first introduced. That was a qualified support, but it was a genuine one. It was a very good first step, but it is my view that it would be a disastrous last step, and that it is necessary to introduce some amendments to the bill. I'm going to mention four to you.

The first one is there is simply not enough time at the front end of the system in regard to both the eight-day triage interview at the board and the 60-day setting for the first hearing. Practically speaking, at the triage interview most claimants will not be represented. It's not going to happen. It's not possible to have legally aided lawyers there. Triage lawyers are not going to be getting all of the story; they'll only get some of the story.

With regard to counsel, they're not really going to have enough time to prepare a case, prepare the necessary evidence if it's a 60-day hearing. In the worst-case scenario, the short timelines will drive refugees into the arms of unscrupulous consultants who are closer to the ethnic communities and quite frankly don't need preparation time because they don't do anything other than show up.

That wasn't a flippant comment, by the way. Unfortunately, it happens far too often.

My suggestion is the minister and the IRB should clearly commit to longer timeframes. I suggest 30 days before the interview and an additional 90 days to schedule the hearing. That would be a total of 120 days.

The second issue I'll refer to is the hiring authority for public service decision-makers. It should be specified in the bill. The single most important component in the entire refugee system is the competence and the ability of that first-level decision-maker. If they get it wrong, then you're going to overburden the appeal division, and you're either going to have inefficiencies because too many cases will come back, which is exactly what happens in the United Kingdom right now, or you're going to have unfair decisions being passed on.

In any event, with regard to that, I suggest that those provisions be put in the bill. If you want, I can give you examples where it stipulates that the chairperson is the person to control the hiring authority. If that's not in the bill, then in actuality it's the Public Service Commission that can appoint the chairperson or several other officials. There's no reason not to have that in the bill.

● (1820)

I can also provide you with one statutory example where the bill also specifies that it be an open hiring process. There are very good reasons it should be an open process. If you ask me, I can give you those examples.

The third issue I'm going to raise is our famous safe country of origin list, our SCO list. If you decide to eliminate the list, then that's fine. But if you decide you want to preserve the SCO list, it's very important that it have some legal rigour to it, in particular clear criteria for assessing the SCO and an advisory committee to recommend to the minister potential countries. It is very important to have external human rights experts on that committee to ensure it is going to be objective. A sunset clause for the designation would help. Also, including the word “fair” in the legislation itself would not hurt.

Fourth, as you know, right now there is a complete separation in the act between the humanitarian and compassionate applications and the refugee claim. It's split right down the middle. I think there needs to be some flexibility in regard to that absolute prohibition. There are certain occasions when it should be possible to make H and C applications. I'm going to refer to two situations. Mr. Waldman may refer to others.

First, in my view, it would be possible that when a refugee claimant made their claim and then withdrew that claim prior to their hearing—so we're talking about the front end of the system—they should be able to withdraw that claim and make an application for humanitarian and compassionate residence in this country. It is easier; it is cheaper; it is faster to make an H and C decision than it is for someone to go through the entire asylum process. There's no reason why it shouldn't happen. Some claimants, once they arrive in the country, discover that in actuality the more appropriate route for them is through an H and C application.

Linked to that, there is a very strange provision in the bill that says if you make an H and C application, you can't refer to any forms of harm, what they call the factors, that refer to sections 96 or 97. What that is saying is that if you're afraid of certain kinds of things that affect your life or very serious forms of physical harm, what we would consider persecution, you can't mention any of that stuff if you make an H and C application. Quite frankly, it is ludicrous. But more than that, it does not capture the situation of refugee law in Canada right now. Frequently there's a major overlap between the kinds of discriminatory harm that would be within the H and C application and the stricter definition of persecution. There's a major overlap. They're not different. It would be grossly unfair to suggest to someone that they could make an H and C application, but they shouldn't mention any of the really bad things that happened to them. It really doesn't make sense.

That's all I'm going to say now. There are other issues in the bill, and if you want to ask me about them, I'd be delighted to respond. I know our time is short, so I'll leave it at that.

Thank you.

The Chair: Thank you, Professor Showler.

We will hear from the other two guests, and then we'll have questions from the members of the committee.

Mr. Boulakia, we'll have you go first, sir.

● (1825)

Mr. Raoul Boulakia (Lawyer, As an Individual): All right, and thank you for the opportunity to speak before this committee.

I'm going to state first of all that I agree with the brief that the Refugee Lawyers Association has presented, and given that there is so much to speak about in this bill, I'm just going to pick a few topics and not try to cover everything.

I agree with Professor Showler that the most important component of the system is the decision-maker up front. You want to have high-quality decision-making at the outset, which is what's going to ensure the integrity of the system, fair decisions, and efficiency, because decision-makers who are qualified and judicious actually do tend to be more efficient overall.

Although this bill is put forward as one that will reform the refugee determination system, I don't believe it really comes to terms with the whole problem of the appointments process. We're going to continue the existing GIC appointments process in what will be the Refugee Appeal Division, and the appointment process for first-level decision-makers isn't truly set out in a transparent way for Parliament to understand at this point. If the board does wind up, as rumoured, supervising some hiring process through the public service, there are no minimum criteria for the qualifications of people who are hired. Qualifications are very easily claimed without a serious vetting of whether people truly are going to be judicious decision-makers.

I believe that Parliament should come to terms with the issue of ensuring a truly arm's-length committee that does genuinely vet the people who are being appointed. This should be across the board at all levels of appointments to the tribunal. In Ontario, the Ontario Court of Justice has an appointment process that is respected and where the committee is made up of people who are truly at arm's length from government. Then the number of selections presented to government, to the minister, is so limited that there isn't the same kind of scope for not appointing the top candidates, as there is now.

With respect to the proposed process, the first aspect of the process will be an interview conducted at the board. Although it's professed that it should be an eight-day interview, I find it hard to believe that the board will be able to stick to that. We've seen this type of problem before. If it is truly done quickly, then, as Professor Showler has stated, it could be quite unfair.

The desire to control what the claimant states and have their first statement be one made to an official at the hearing I think is problematic. It's going to impair people, particularly the most vulnerable, from disclosing all of their information. I'm concerned about how that will impact on people as they progress through the refugee system.

The appeal system does not allow people to prove that they were telling the truth in the first place. That's a grave limitation. It only allows evidence that's quite limited. You have to basically adopt the same test that exists under the current PRRA, the pre-removal risk assessment model, where people often have been telling the truth, but if it's deemed that they should have known better or could have thought of presenting the evidence before, they're barred from presenting it. I think the purpose of the appeal should be to ensure that the appeal board does get the truth.

With respect to legal aid, at present the government and provinces have a cost-sharing agreement, which has essentially been a compromise that has ensured that legal aid has continued for refugee claimants.

● (1830)

In Ontario last year, about half of the funding for legal aid came from the federal contribution. Legal Aid Ontario is concerned about the cost implications of Bill C-11. Just today, they told me that they're coming up with cost estimates of what they believe Bill C-11 will imply for them, and they seem to believe that costs could go up by 50% from last year's totals.

Right now the cost-sharing agreement is going to expire in March 2011. This new system is clearly going to impose some new costs. Also, the CBSA is going to get substantially more resources and the hearing system is going get more resources, which is going to lead to more need for representation on the other side, and I am concerned that the bill does not balance that out or ensure that the provinces will receive adequate funding or encouragement to continue with their legal aid funding. A mulit-year commitment would be helpful to give greater stability to our provincial legal aid plans.

I'll leave my comments at that and invite questions.

The Chair: Mr. Waldman, do you have some comments to make?

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

Like Mr. Showler, I gave qualified support publicly to the bill when it was introduced, because I believed that it was a good start. Having said that, I agree with Mr. Showler that if changes aren't made to the bill in its current form, the bill will create serious problems. It will certainly result in charter challenges, and I believe that it will undoubtedly fail. That's why I think the work of this committee is vital, because in the end, we all want a fair and efficient refugee determination system.

Some of us, like me, have been through this before. I can say that I was present in 1976, when the Immigration Act was enacted. I was present in 1989, when the IRB was created. I was present in the mid-1980s, when there were significant changes to the procedure. I was also present in 2002, when the procedure was changed again, and I am present again today.

We've seen it. We've heard the promises of the officials over the years that this was the solution. And each time, we've seen that their proposals have not succeeded, because to a very large extent they've ignored the representations of experts.

My first point, and I agree completely with Professor Showler, is that the essential issue is that we have to have competent first-level decision-makers. Over the years we've seen that there have been two practices. The first has been to not appoint competent decision-makers. The selection process has not been satisfactory. The second has been to underfund the process.

The first condition of any successful determination process must be that the system must be one that allows for the appointment of competent decision-makers. I agree with Professor Showler that the decision-makers should be appointed by the chair or under the power of the chair. And the government must make a firm commitment that it will ensure that the appointed decision-makers have adequate resources to cover the quorum needed to make the necessary number of decisions.

The second issue here, in terms of the proposals, is the timing. Again, I agree with Professor Showler and the other witnesses that the timing is completely unrealistic. It's been suggested that because the eight-day interview is only an information-gathering process, the information will not be used against a person. That is completely untrue. In any procedure during which information is recorded and kept, that information can be used at the subsequent hearing to undermine the credibility of the witness. It can be used to point out inconsistencies or omissions. That's why it's vital that the refugee claimant be afforded legal advice before he or she is called in for the interview. That's why an eight-day time period is completely unrealistic.

Even more unrealistic is the 60-day hearing process. To legislate a timeframe—it won't be in the act, but it will be in the rules—that is not going to be complied with really undermines the rule of law. We already have one example of that. At the current time, IRPA requires a Federal Court judge to set down a judicial review of an immigration matter within three months of the date on which leave was granted. Now, because there are too many hearings required in Toronto, and they don't have enough slots, the Federal Court routinely looks at these leave applications, sets them aside, because they don't have slots, and issues the orders months after leave has been decided. That is done to create the legal fiction that they're complying with the act, when everyone knows that they're not. It really undermines faith in the rule of law when you have justices of a court who don't comply with the law because they physically can't. The problem is not the court; it is a law that requires them to render decisions within timeframes that are impossible, given the resources available to the court. So the timeframes are completely unrealistic.

The next issue, of course, is the safe country of origin list, the SCO list. I'm sure that other people have discussed it, so I won't say too much. In my view, a list is not necessary. If the system is adequately funded at both the first level and the second level, the system will be able to deal with the claims in an expeditious fashion. To create a list to create different categories of claimants, some who get appeals and some who don't, in my view is unnecessary and unfair.

● (1835)

Having said that, if you insist on creating a list, I agree with all the recommendations of all the previous speakers with respect to the types of requirements that have to be incorporated into the legislation.

I'd like to speak very briefly about the last point, which is the one that I think concerns me more than any other, and that is restrictions on the humanitarian and compassionate process. The H and C has been part of our humanitarian tradition in Canada for many, many years. Indeed, the Supreme Court, in the case called Jimenez-Perez, in 1984 upheld the fact that immigration officials were required by law to consider humanitarian applications. I've dealt with thousands of persons whose lives have been saved because of the possibility of applying and being accepted on humanitarian and compassionate grounds. It's been the one aspect of our immigration process that's been constant through the years, and it's consistent with our humanitarian tradition.

This legislation will seriously undermine, or in some cases effectively eliminate, the right that people will have to apply on humanitarian and compassionate grounds. In its current form there's an absolute bar to applying once you've made a refugee claim during the entire proceedings, and for a year afterwards. There's no reason for it. The existence or not of a humanitarian application has been held repeatedly by the courts to not have any impact on a person's right to stay in Canada. You can apply for a stay, but they're very infrequently given, and in any event the number of stay applications is relatively small.

Taking away this right, though, has very serious implications. And I'll close by giving you one example. Last week I was in the Federal Court of Appeal on a case that has interest because it deals with the interpretation of the convention. The government lawyer was taking a very extreme position and said the convention should be interpreted in a certain way. One of the justices of the Court of Appeal said, “Well, if that's the case, you're putting people in situations where they're going to be denied refugee status but they could be at risk. What's their remedy?” And what did the lawyer say? The lawyer said what lawyers always say, that there's always a remedy, and the remedy is the humanitarian application, because that's been the last resort that's existed.

It wasn't me saying it. It was the lawyer for the government saying it, to which the Federal Court judge said that if the legislation that's currently before Parliament gets passed, that remedy will no longer exist. I'll tell you that if it gets passed, you'll force us to challenge the legality of that restriction under the charter, because there will be many cases that will arise where people will have compelling cases but will not be able to bring them forward through the legal process.

Those are all my comments at this point. Thank you.

The Chair: Thank you, gentlemen. Obviously all three of you are very well qualified, and we appreciate your bringing your expertise to the committee.

The committee members will now have some questions.

Mr. Bevilacqua, you have up to five minutes, sir.

● (1840)

Hon. Maurizio Bevilacqua (Vaughan, Lib.): Mr. Coderre.

The Chair: Okay, Mr. Coderre.

Hon. Denis Coderre (Bourassa, Lib.): Yes, I'll split my time with Maurizio.

Mr. Waldman, do you make a distinction between a safe third country agreement and a designated country?

Mr. Lorne Waldman: The safe third country agreement is the one we have with the United States. All it does is provide that people who come to Canada through the United States and can make a claim in that country should make their claim in the United States and not in Canada. They're not being denied a right to claim; they're being told that because the United States is a country that Canada has determined respects human rights and gives a fair refugee determination, they should make the claim in the United States.

This is completely different from the list that's now being proposed. The effect of being put on this list will only impact your rights in Canada. You'll have a right to a first determination, but you will not have a right to an appeal. Some people would ask why that is important—you're still getting your quality first hearing. But we have sustained for many, many years that there will be problem decisions; it's inevitable in any decision-making process.

The judicial review is not an adequate appeal mechanism, and that's why many of us lobbied for years for the creation of an appeal mechanism. So if an appeal mechanism is now recognized as being necessary—

Hon. Denis Coderre: I agree with you, Mr. Waldman. The reason I'm saying that is because having designated countries is where we'll have major problems. We can have some level of negotiation among countries in some process, but we have to keep our way of doing things in Canada, because every case is specific. My concern, and I'm totally in support of Professor Showler, is that when we talk about designated countries, it means, number one, we're losing the value of our immigration and refugee system that every case is specific.

Is that right, Professor Showler?

Mr. Peter Showler: That's correct.

Hon. Denis Coderre: One of my concerns is, first of all, I'm totally in agreement with the process, where we have the first line with competent officials. I don't have any problem with that.

I would like to hear from you a bit about accountability. I believe that a minister has the right to have some special power and there should be a balanced approach between the system and the fact that a minister is representing the people, in a sense. How can we manage to have a good hiring process without just being at the mercy of that process and keeping that last resort from the minister, for example?

Mr. Peter Showler: Are you referring to the safe country list, or are you talking about the hiring of members?

Hon. Denis Coderre: Hiring.

Mr. Peter Showler: It is presumed under the legislation right now that the chairperson presumably would have the authority for the hiring. This is of the public service decision-makers. What I pointed out, however, is that since it only says it's under the Public Service Employment Act, in actuality that act says that it's the Public Service Commission that could make the designation of who is in charge of the hiring process.

My advice to the committee is that you make it absolutely clear in the bill. Other than that, the minister would not have a role in the appointment of those public service decision-makers. That is the expectation. In a sense, the government has surrendered that in order to have a long-term competent corps of decision-makers.

Hon. Maurizio Bevilacqua: I have approximately 40 seconds to ask a question. I'd like a very simple yes or no answer to the following question.

As you know, in any public policy debate you have those who are in favour of a particular bill, those who are totally against it, and then somewhere in between there are those who would like amendments to the present state. Before we go any further as a committee, does this bill have the raw materials to build a law that will make sense for Canadians and be effective, efficient, as well as respect due process?

Mr. Peter Showler: In my view, yes.

Mr. Lorne Waldman: I think Professor Showler and I are in agreement. We both took the same position. The raw material is there, but if it's not amended, we'll be worse off than we are now.

Mr. Raoul Boulakia: In my view, the answer is no. In my view, the legislation presented to Parliament should be transparent enough, should be fleshed out enough, that we truly know on the ground what we're going to be dealing with.

There are a number of components in this bill that are going to be very problematic and that will impair people's rights. It does not, in a transparent way, truly deal with the whole issue of appointments.

I think this process that we've had has been that the package was developed without meaningful public consultation. Then it's presented to Parliament, and Parliament is truly being rushed through this process. As a result, Parliament, if it passes legislation, will be passing legislation without a really strong sense and without clear legislation that guarantees how this is going to play out.

● (1845)

The Chair: Thank you very much.

Monsieur St-Cyr.

[*Translation*]

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

Mr. Showler, in your presentation, you refer to this provision designed to exclude the factors used to establish refugee status in humanitarian applications. I suppose you are referring more particularly to the new subsection 25.1(3).

I had the opportunity to question officials about this measure and I did not get a satisfactory answer. You explained to us that you didn't understand its utility. I don't know whether one of our other two videoconference guests or you, Mr. Showler—even though you don't support this provision—could tell me what's the reason behind it? Why does the government want to include this subsection, the purpose of which is to rule out the factors used to establish refugee status in humanitarian applications?

I have to ask you the question because the officials did not really answer it.

Mr. Peter Showler: It's very hard to answer that question. Of course, I'm not the government. So I can't speak to its motives.

It wants to completely separate the two processes, as though they were completely different. That's a theory. In fact, that's not the case because the reasons for those two processes are mixed.

I would like to add something in English.

[*English*]

It also does not follow, if you will, the modern theories on forced migration, and this is what we always see at the international level. There is always this observation that people leave their countries for motives that contain a mixture of voluntary and involuntary elements, but you can always make this separation, or try to make this separation, in terms of whether or not

[*Translation*]

There is a well-founded fear of persecution, for example. Sometimes yes, sometimes no. But the reasons for leaving one's country are mixed reasons.

[*English*]

The Chair: Mr. Boulakia, I think we cut you off. Did you have a comment?

Mr. Boulakia, can you hear me?

Mr. Raoul Boulakia: Yes. My impression is that the assumption underlying restrictions is that humanitarian applications hold up deportation. So the idea is to place restrictions, because in public debate often humanitarian applications have been treated as if they were some kind of an appeal. But in practice, a humanitarian application doesn't actually block deportation. To stop a deportation based on humanitarian application, you would have to go to the Federal Court and convince the judge that you had a serious case and that the deportation should be stayed.

Mr. Lorne Waldman: I think the question was why they're trying to restrict it. From what I understood from officials, I think their belief is that if you make a refugee claim, you should have a determination through the refugee stream, and the H and C should deal with everything that isn't in the refugee stream.

The difficulty with that approach is, of course, as Professor Showler said, that some things are not black and white. To give you just one simple example, there is jurisprudence that says if you make a refugee claim and your risk is one that's felt by everyone, then you're not entitled to refugee status. But the jurisprudence also says that even though there's a generalized risk, it is relevant to an H and C application.

I'll give you an example. In Haiti, there's this disaster now because of the earthquake. That may not be the basis for a refugee claim, but it could be a highly relevant factor when you were deciding whether someone should be given humanitarian grounds. So the problem with the proposal the government is putting forward is that it tries to put everything into nice, neat little silos where one is for refugees and one is humanitarian. But the reality is that life is much more complex than these nice little categories, and there is often overlap, as Professor Showler said.

● (1850)

The Chair: Merci.

Ms. Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): I just want to talk about the appointments at the first level.

On October 20 of last year, the Public Service Commission did an audit. They found that more than half of the Immigration and Refugee Board's appointments were made based not on merit or the guiding values of fairness, transparency, access, and representativeness. Approximately 61% of appointments—or 33 out of 54 appointments—were not made based on merit. More than half of the appointments were made based on partisan considerations, and preferential treatment was given. This was in the audit done by the Public Service Commission.

I am quite worried. I asked the chair of the board, and he said it's not that they weren't based on merit; it was just that they couldn't show the merit. So maybe the hiring was done without a clear process or there wasn't any specific process. I don't know how people were hired.

Now, that is a huge problem, because these are the ones who are appointed by the chair of the board.

Coming back to your first point, Mr. Showler, and then perhaps I'll ask Mr. Waldman, what do you think should be done and what is the clear recommendation that we must have so that the people with merit are the ones who are hired, and they're hired based on competence rather than for partisan purposes?

It's not necessarily based on being a Conservative or a Liberal, though it seems that had been the track record for a few years, but I'm not necessarily casting stones at one party or another. The system seems to be a problem.

Mr. Peter Showler: First of all, in terms of public service decision-makers, I've said the authority should lie with the chair because that's where you gain your independence.

In actuality, the Immigration and Refugee Board has become quite good at selecting RPD decision-makers.

● (1855)

Ms. Olivia Chow: What does RPD stand for?

Mr. Peter Showler: It's the Refugee Protection Division. We're talking about the refugee decision-makers.

The first half of the current appointment process right now is a very complicated selection process involving an examination to identify six qualities of members. They go through quite a subtle process, so they have a lot of those skills.

This not being any more critical than necessary, but unfortunately the system right now is a hybrid system. All that comes out of the assessment is a recommendation to the government. It's not a ranking of the candidates. It's not a categorization of superior, average, or barely competent. It's only recommended or not recommended. It then goes into, if you will, the political pool.

The skills of the board to analyze that position are there. The board is capable of doing a merit-based assessment.

What I've said is critical for that assessment is the field of candidates: it has to be not only within the board or within the public service, but it has to be open to the general public.

Ms. Olivia Chow: It has to be transparent.

Mr. Peter Showler: That's right.

In Elections Canada, it actually provides in the act that for the position of the chief electoral officer they must go outside. It doesn't mean a public servant, an immigration officer, or a board member can't apply, but that we get the widest possible field of candidates.

We're hiring 124 of these people. We're paying $100,000, which is a pretty good dollar. We can actually get some excellent decision-makers if there's a commitment through the system to do it.

Ms. Olivia Chow: I'm wondering whether you can provide some specific guidelines on how we could amend this area to make sure that we tighten some of the rules.

We need to know for sure that for these people who are hired, if there's an audit a few years from now, we won't get the kinds of results that I just read out from October.

Mr. Peter Showler: I'm not sure all of those could go in. It could certainly be in the board policy and in the rules, and there could be a commitment from the chair. This is framework legislation for the general authority to do it and the requirement for a broad external hiring process. It would be difficult to put more detail than that into the regulations.

I would say for the immigration officers you're referring to, the public service hiring process is very difficult and very different. They were inherited a long time ago. They were transferred to the Department of Immigration. There isn't the same commitment or history.

This is an opportunity for a fresh start, and I really hope the board and the government will take it.

The Chair: Thank you, sir.

Mr. Boulakia and Mr. Waldman, we've run out of time.

We're going to move on to Mr. Dykstra.

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

I'm going to turn some of my time over to Mr. Calandra.

I only have one and a half questions.

Peter, you've answered a number of the questions that I had listed. Thank you.

There's one that I would like to get your response on. If we could keep it brief, that would be great, because we could ask a couple of extra questions.

One of the things you talked about was on amending the format for hiring and what would make up the new complement in terms of government employees, rather than political or ministerial appointments. Which do you prefer as being the best one?

Mr. Peter Showler: Do you mean between political appointments or the public service?

Mr. Rick Dykstra: Yes.

Mr. Peter Showler: If it's done well, I'd have to say the public service. Yes, if it's done well, the public service.

Mr. Rick Dykstra: Okay. Thank you.

The other question I have is could you explain how an assisted voluntary returns program would increase the number of voluntary removals? Has the AVR concept been successfully tried in other countries?

Mr. Peter Showler: Yes, it has. It was actually successfully tried here in Canada in 2000 and 2001 through a pilot project in Toronto. As for how it works is, it's a smart use of money.

Frequently, refugee claimants are refused who actually thought they were refugees. They're not all phony claimants. They realize they're not, and they're actually prepared to accept the return.

In the pilot project in Toronto, there was a 65% uptake in acceptance of the ones who were offered it. It's actually fabulous. It's much better than any removal process that takes place now. It makes sense.

The one warning is on this notion that the $2,000 goes to some type of agency over there to dole out. Please don't muck that up with the Department of Immigration. Don't turn it into another bureaucratic boondoggle. You need to get the money to them quickly so that it actually works.

Mr. Rick Dykstra: Thank you.

I'll turn the rest of my time over to Mr. Calandra.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): Thanks for giving me the opportunity to keep talking.

If I'm wrong, just correct me. You said that it would be ludicrous to remove risk from the H and C analysis. I know the RPD considers risk of persecution. The appeal would also consider risk. I'm just wondering why it is, then, that we would need a third consideration of risk by a CIC official.

Mr. Peter Showler: There are different forms of harm and risk, but they're not separate. They overlap. For example, there are kinds of persecution called cumulative persecution, which is made up of several different smaller kinds of harm that would all clearly come within H and C. They are separate streams. I'm not questioning that they be separate streams, but if you're assessing the hardship, which is what you're trying to assess under H and C, I'm questioning that you would exclude anything that could look or sound like persecution. You're trying to take one big ball and carve it into two categories, and that's not how it works. It's really mixed together very much. That's why.

Mr. Lorne Waldman: Further to what Peter said, the reality is that in cases involving refugee claims, what constitutes legitimate persecution and what doesn't is often very subjective. If you make a nice little silo, you could say that you have to make it within the refugee claim. But the refugee decision-maker could say that really isn't persecution, it's really something else, and it should be decided within the context of the H and C.

We have many cases where people go forward with genuine refugee claims. Their stories are believed, but the refugee board member says that it's just not quite persecution, it's something else. That's why having these nice, neat silos just doesn't work.

● (1900)

Mr. Paul Calandra: Mr. Waldman, let me ask you a question. Again, correct me if I'm wrong, but you seem to be saying that removing pending H and C claimants is actually in the law and it's appropriate. I'm wondering if you would support the proactive removal of asylum claimants who withdrew their claims at the IRB and had an H and C pending, if that was an option.

Mr. Lorne Waldman: So you're asking if I would support the possibility that persons could be removed pending an H and C? I would say that, generally speaking, the policy is that they will be removed. There is always the possibility in exceptional cases for a person to go to court and seek a stay.

In my experience, of every ten people who come into my office and ask me to seek a stay, I will only seek it in perhaps one case, and even then I will only be successful one in three. The likelihood of getting a stay is very small, but I don't think you should remove that discretion where there could be an exceptional case, where some exceptional matter arises that warrants not deporting the person while the H and C is decided.

I would say as a general policy it should be that if there's something wrong with it, that's the current policy that we've had for many years.

The Chair: That's it, Mr. Calandra. Thank you very much.

Mr. Waldman, Mr. Boulakia, and Professor Showler, you've given excellent presentations, and we do appreciate your coming here this evening. Thank you again.

Mr. Peter Showler: May I add that I have provided a brief to the committee? It's simply delayed until the translation is completed. Unfortunately, our translator at the University of Ottawa was on two weeks vacation.

The Chair: That happens.

We're going to suspend for about a minute.

● (1900)

(Pause)

● (1905)

The Chair: Good evening, ladies and gentlemen.

We have with us three groups. From the Centre des femmes immigrantes de Montréal we have Vanessa Taylor, co-chair. From the Refugee Lawyers Association of Ontario we have Andrew Brouwer, the chair of the law reform committee. From Toronto by video conference we have the Folk Arts Council of St. Catharines Multicultural Centre, Salvatore Sorrento, chair, and Ibrahim Abu-Zinid.

Each group has up to seven minutes to make a presentation. We'll start with Ms. Taylor.

Good evening to you, Ms. Taylor.

Ms. Vanessa Taylor (Co-Chair, Centre des femmes immigrantes de Montréal): Good evening.

I would like to start by saying that the Immigrant Women's Centre of Montreal applauds the present government's efforts to amend the refugee determination process. We understand its priorities in making the asylum system more efficient.

I agree with the minister that a near-58% refusal rate of asylum seekers over the last two years is wasteful, and an average waiting period of 19 months before first hearing is unacceptable. It is therefore vital to encourage the institution of a system that increases Canada's refugee acceptance rate, while significantly reducing delays.

However, it is our position that this reform should not be carried out at the expense of fairness. More specifically, it must not favour what some people might refer to as bona fide refugees—like those who are presently in UN camps, for example—over asylum seekers who may seem more suspicious and opportunistic.

We should not be privileging refugees overseas solely on the basis of a perception that they can more easily be processed and can better prove their claims of persecution to be well founded. If we sacrifice the lives of asylum seekers, who would otherwise become accepted refugees, by making it more difficult for them to adequately present their cases, it might prove to be more economical, but the cost would still be too high.

After careful review of Bill C-11 we find that certain of the proposed changes would especially handicap those seeking asylum from gender-based persecution.

I would like to express my concern about the following two proposed amendments. They are subclause 11(2), replacing subsection 100(4); and proposed subsection 161(1), making a preliminary interview mandatory within eight days of being referred to the Immigration and Refugee Board, followed by a subsequent hearing no more than 60 days following that interview. The other one is clause 12, adding a new subsection 109(1) designating countries of origin. Citizens would not be eligible for an appeal at the RAD.

[*Translation*]

Women, in their country, may suffer specific types of violence related to the fact that they are women, despite an appearance of democracy in those countries. Spousal abuse, trafficking in women and young girls, sexual mutilation, degrading widowhood rites, forced marriage, crimes of honour, sexual orientation and the maintenance of women in the state of minors are a few examples of that.

An obligation for these women to submit to time restrictions, with regard to an interview in the 8 days following the filing of an application for asylum and the first hearing within 60 days following that interview, as proposed in subsection 11(2) of the bill, could place serious constraints in view of the content of the experience of these women.

As some members of Parliament have already pointed out, for a woman who, for example, has been the victim of sexual violence committed by figures of authority and for whom it is impossible, in her country of origin, to even talk about that situation, it will be much more difficult to speak frankly about her experience to an official, particularly since she may not have had enough time to obtain good legal advice.

We understand that, if the official in question finds that the applicant needs more time to prepare psychologically for the interview and hearing, it would be possible to extend the time periods. However, how do you ensure that that official can in fact come to that conclusion if the woman in question has no one to defend it? Can we count on that official being able to read her thoughts? We don't think so.

That's why we strongly suggest to the authors of the bill, first, that they clarify the utility of this interview before introducing it, more specifically with regard to the record of personal information which, we believe, already serves the purpose that such an interview might have.

Second, if the justifications prove valid, we emphasize that the time period granted is sufficient to obtain the assistance of a legal counsellor.

Lastly, the creation of a list of designated countries, in our view, could result in discrimination against women. A list of these designated countries, from which some women seeking asylum come, would have the consequence of denying them access to appeal or a fair and independent hearing that would completely take into account injustices committed on the basis of their gender.

A possible solution to this problem would be to clearly establish the regulations regarding rigorous criteria for selection of designated countries, which would take into consideration the situation of women in those countries.

However, to ensure that our refugee determination system is fair for all, we ask that subsection 109(1) be repealed. This does not mean we aren't sensitive to the problem of countries that generate a high percentage of asylum refusals, but that we believe instead that the necessary time must be taken to propose an alternative solution that wouldn't cause harm to a given group.

Women asylum seekers often have no other possibility than to leave their country and to seek protection at the port of entry. We are seeking refugee status for women who are persecuted because they are women and because we are opposed to the twofold violence of an application processing system that would discriminate against women. That, in our view, would be a violation of the Canadian Charter of Rights and Freedoms and of the Geneva Convention.

Women who file a valid claim based on gender and individuals who file a claim based on sexual orientation and sexual identity will be major victims of this bill—

● (1910)

[*English*]

The Chair: Ms. Taylor, you're almost finished anyway—

Ms. Vanessa Taylor: Yes, it's the last paragraph.

The Chair: —but could you slow down for the final paragraph?

Thank you.

[*Translation*]

Ms. Vanessa Taylor: Women who make a gender-based claim and individuals who file a claim based on sexual orientation or identity will be the major victims of this bill, particularly since it would prohibit access for asylum claimants to humanitarian considerations and to risk assessment before removal for a period of 12 months following the inadmissibility of the claim. Prohibiting this recourse will only increase the number of women whose lives will be in danger when they return to their country of origin.

[*English*]

The Chair: Thank you very much.

Mr. Brouwer, welcome to the committee. You may make some comments, please.

Mr. Andrew Brouwer (Chair, Law Reform Committee, Refugee Lawyers Association of Ontario): Thank you for this opportunity to address some of the concerns of the Refugee Lawyers Association of Ontario.

We are a voluntary association of about 200 refugee lawyers who practise solely or primarily in the area of refugee law. As refugee lawyers, we have a number of very serious concerns about this bill. We have laid these out in a written brief. It's about 35 pages, and I don't know whether it's been circulated yet. We provided it to Mr. Chaplin last week.

The Chair: We'll get it eventually.

Mr. Andrew Brouwer: Excellent.

Given the limited time available, I've decided to focus my comments today on the very specific issue of that initial eight-day interview, in part because I believe it won't be addressed all that much by some of the other advocates or in the discussion of some of the other issues, including H and C applications and the safe country of origin list that are also of grave concern to us. But hopefully we can get into those issues during our discussion.

As you know, the government is proposing to replace the current written statement, the personal information form, or PIF—which is drafted with the assistance, normally, of counsel over the course of 28 days—with an interview before an IRB official eight days after referral by the Canada Border Services Agency, or CBSA.

Counsel, as I understand it, will be excluded. Whether or not they are actively excluded by law or regulation, practically speaking, they will be excluded, because as others have mentioned, finding a lawyer, developing a relationship with a lawyer, getting legal aid, and then appearing before the IRB within eight days is just not going to happen—and I speak from experience on that.

In our submission, the eight-day interview is neither workable—and I'll explain why—nor fair; nor, would I say, is it consistent with the charter.

Currently, refugee claimants set out in the PIF the basis of their refugee claim, as well as details of their background, their family, where they've worked, and where they've lived over the past ten years. In our experience, the process of developing the narrative portion of their refugee claim, that is, the PIF, is a very difficult and painstaking task. It's really getting someone to open up about what are sometimes the most difficult experiences they've ever had in their lives.

Usually, in order to develop a decent PIF, you need to develop a careful relationship of trust with your client. In my experience, we sit down two or three times, and maybe four times, with the client over the course of the 28 days to develop the relationship, to explain to them that what they tell us stays in the room and that what they tell the board will not go back to their country of origin, and to help them trust us enough to tell us about some of the very taboo experiences they've sometimes suffered.

Under the bill, this process of developing this relationship and setting out these details will be done by an officer eight days after the refugee's arrival. In our submission, given the kinds of information that need to be presented at that time, it's simply not practical. You cannot reasonably expect a refugee who's just arrived, having faced some of the most traumatic experiences we can imagine, to appear before an officer of another government in another language in a foreign country and talk, in any kind of detail, about what they've just gone through. I say this both because of the issue of the difficulty of talking about those issues, and also because of the misconception of many people that when you tell a government, any government, about what happened to you back home, it could well get back to your own government or to the people back home.

In our submission, at least two possible things could happen if we do go ahead and implement this eight-day interview in place of the PIF. One is that where we have a responsible IRB official taking the story down, they'll realize that they can't get the whole story down in one meeting, so there will be an adjournment and then another adjournment as they gradually try to build up the trust that counsel normally needs to do.

In my submission, what we'll see very quickly is a backlog of claims at this very first stage. So instead of what is a reasonably efficient 28-day process, we're going to have backlogs accumulating before that initial officer—which will ultimately delay the process rather than speeding it up, as is the intention of the minister.

● (1915)

The alternative, of course, is that we have officers at the IRB who don't have that same degree of training or commitment to spend the time to get the story, and what we'll get is a cursory interview or an aggressive interview where only some of the information about the refugee claim is actually presented. That, then, will be presented at the refugee hearing. If by that time the person has retained counsel and developed a relationship of trust and told their story, they will finally go to the hearing and tell the whole story. The contradictions between the sparse information given at that first interview and the detailed information given finally at the hearing, with counsel, will be used against them. They'll be found to be elaborating and lying about their stories and they will be refused on that basis.

Neither of those options, either the backlog or a set-up for failure, is an acceptable way to run refugee claims, in our submission.

So from our perspective, this initial interview should be struck. It's inappropriate. There may be other ways, if the board wants to conduct an interview with the claimant, to get some basic information—that's fine, but not the merits of the claim.

Very briefly, I'll just touch on the three other issues, if I may. I have two sentences on each.

One issue is with respect to the safe country of origin list. I would just ask the committee not to be lulled by the idea of objective criteria in the act. It's the position of our association that simply implementing some criteria about what "safe" means is not actually going to protect this law from the equality and charter challenges that we will bring, nor will it fundamentally allow the minister to be constrained by clear criteria.

The second issue is the H and C restriction. Others have talked about it. I hope we'll get some questions on it. Again, eliminating what has been a fundamental aspect of Canadian immigration law for decades is inappropriate.

And finally, with respect to the PRRA restriction, getting rid of access to a pre-removal risk assessment for a year following a final refusal at the board is not consistent with the charter and is not consistent with international law. If it gets passed, it won't last for long.

Thank you.

● (1920)

The Chair: Thank you, sir.

Mr. Sorrento, you may have time to speak to the committee.

Mr. Salvatore Sorrento (Chair, Folk Arts Council of St. Catharines Multicultural Centre): Thank you, Mr. Chair.

Good evening to you, everyone. Thank you for the opportunity to be able to present.

And my apologies to you, sir, and to the committee for not having a brief for all of you. I would like to proceed, with your permission.

The Chair: Of course, sir. If you wish to present us with something in writing at a later date, you're quite welcome to do that.

Mr. Salvatore Sorrento: I will do so, sir, thank you.

This paper will focus on Bill C-11's positive contributions to amend the Immigration and Refugee Protection Act and the Federal Courts Act for immigration. This paper does not purport to answer or attest to all aspects of the bill. Other critical details and clauses will be left to our policy-makers, legal professionals, expert commentators, and stakeholders who have a much deeper and profound grasp on the details of the bill.

It is generally agreed that Canada's current asylum system is too slow. It can take many, many years to finalize a claim, and the average time required is about 18 months for a first decision at the IRB because of backlogs. Many refused claimants carry on for years waiting for their issues to be addressed. The delays hurt authentic claims, and spurious claims are detrimental to and further impede this process. The focus must be on obligations to protect individuals fleeing from violence and persecution. This should be done in a timely, honest, and measured but deliberate fashion.

The current system takes far too long. The new bill provides for a much speedier hearing. It is important that refugee claimants be granted status as quickly as possible, as deemed by the IRB. The quicker the hearing, the less likely for false claims and the sooner the claimants can get settled in Canada. The fewer people making false claims, the less likely the system will get clogged or backed up. This is another positive feature of the proposed bill.

Other strengths include access to a system whereby refugees are allowed an opportunity to speak of their situation. Many countries do not allow this. Access allows for fewer people going underground or remaining illegally in Canada. The incentive is for refugees to claim status so they are known to officials. The government can identify claimants easily and this can deter the temptation to go underground.

First-level decisions by the IRB are another strength. They have access to good resources with regard to information about other countries, careful procedures, and refugees get a full and fair opportunity to tell their story. If a claim is accepted, then refugees are permitted to have permanent status. Other countries do not allow refugees to acquire full status as citizens of their host country even when their claims are accepted. Once permanent status has been granted, individuals can set down roots and call Canada home.

The proposed new asylum system would include a refugee appeal division at the IRB. The appeal process would allow new evidence to be introduced if it were not available at the initial IRB hearing. All failed claimants, including those from designated safe countries of origin, would continue to be able to ask the Federal Court to review a negative decision. The idea of being able to introduce new evidence not available at the initial interview allows for a great opportunity to enhance one's case.

Making refugee decisions is an incredibly difficult task. To meet this challenge, a reformed system needs to be based upon the following three pillars: a good first decision, a reliable appeal, and the prompt removal of failed claimants.

Our recommendations are that the IRB place highly trained, skilled, and experienced staff at the tribunal to make sound first decisions; that the IRB undertake a regular review of what are considered to be safe countries; that the CBSA remove false claimants in a timely fashion; and finally that the IRB has discretion to extend the timelines in exceptional circumstances.

Thank you, Mr. Chair and committee.

● (1925)

The Chair: Thank you, Mr. Sorrento.

Mr. Karygiannis.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): Just a quick question, sir. Should we allow PRRA to take place?

Mr. Salvatore Sorrento: No, we should not allow fraud to take place.

Hon. Jim Karygiannis: Why not, sir?

Mr. Salvatore Sorrento: It's against the law.

Hon. Jim Karygiannis: Sorry, PRRA is right now in place.

Mr. Salvatore Sorrento: Oh, PRRA. I Beg your pardon. I thought you said fraud. I apologize.

Hon. Jim Karygiannis: No, I said PRA, sir, P-R...PRRA. Are you familiar with the term?

Mr. Salvatore Sorrento: I am familiar with the term. Pre-removal risk assessment?

Hon. Jim Karygiannis: Sure. Should we continue to have that?

Mr. Salvatore Sorrento: Well, I'm going to confer with our expert who has eight years. I brought him along with me—

Hon. Jim Karygiannis: And he's also part of your board, sir?

Mr. Salvatore Sorrento: He's not part of the board; he's front-line staff who has worked with—

Hon. Jim Karygiannis: Okay.

Mr. Salvatore Sorrento: I'll beg your pardon for just for a moment, sir.

Can you speak on the PRRA, Ibrahim?

Mr. Ibrahim Abu-Zinid (Folk Arts Council of St. Catharines Multicultural Centre): The PRRA system could be there as a final step in the process before removing the refugee from the country. It gives him a last chance if the conditions have changed or if during the process of the claim itself some circumstances have happened in his country that can support his claim as a refugee.

Hon. Jim Karygiannis: Thank you.

Do you feel that eight days at the onset is enough time in order for a claimant to get their material together and apply, or should they be given more time for the initial stages?

Mr. Ibrahim Abu-Zinid: In my opinion, eight days is too short for a refugee to be even interviewed for his case. By the time the refugee reaches Canada, he has passed through many problems, and he needs time first of all to get past the trauma and the psychological problems.

Hon. Jim Karygiannis: What would a fair time be, sir?

Mr. Ibrahim Abu-Zinid: I would say it would be at least 45 days before the first interview.

Hon. Jim Karygiannis: What about the hearing, how soon after that should it be? Right now it's 60 days.

Mr. Ibrahim Abu-Zinid: The hearing should be at least around six months after that, because some refugees, to support their claims, need to prepare documentation or to get it from abroad, from overseas, or do some research and some other things, so they need some time to do that.

Hon. Jim Karygiannis: Thank you.

I'll ask the same thing to our panel here in Ottawa: Is eight days enough, or do you see any problems with it being eight days? Should the eight days go to 28, 45, 50? Should the 60 days for the hearing be four months or six months? Should we still have the PRRA? Those are the kinds of questions I'm looking for answers to.

Mr. Andrew Brouwer: With respect to the question of eight days, we have a few problems with the very idea of an official at the IRB collecting the claim, as opposed to the person putting forward their own claim in their own words. So in our submission, it shouldn't exist. There should be no interview at the IRB within eight days. There could be an interview maybe a few weeks afterwards in order to get the person's address and give them referrals, if that's what the IRB would like to do, or to start talking about when they might be ready to get their claim ready. But that's not something that's needed in the law.

Right now, the IRB in Montreal does pre-hearing interviews in which they just assess the readiness of the person for the hearing, after the personal information form has been submitted. So in our submission, generally speaking, having 28 days to submit the PIF with the assistance of counsel would work. I don't think we need more time than that.

With respect to the 60 days that's been floated for the hearing, I don't think 60 days is practical at all. There may be very unusual occasions on which we have the situation of a client who has a folder of evidence with them when they arrive in Canada, but in most cases the process of collecting evidence to support a refugee claim is something that takes months. The principle, in my submission, ought to be that a refugee claim gets heard when it's ready to be heard, when the evidence is there. You can have a target of say six months, but there has to be some flexibility there so it can be earlier if the person is ready, or later if we're still waiting to get a document out of Somalia or North Korea, from which it takes a very long time to get documents.

● (1930)

Hon. Jim Karygiannis: Mr. Brouwer, the other thing we have is the third country, a country that is deemed to be safe. Is there such a thing? Indeed, there are some countries that are safer than others. I always go back to the case of the draft dodgers in the 1960s, and the same situation right now with people who want to flee the United States because they don't agree with the war, and they want to come up here. Is there such a thing in your mind that says yes, indeed, there are 10, 20, 30, 40 different safe countries, or is this something for which there should be a panel that says people applying from those countries are indeed safe? I can talk about my home country, the country I was born in, and it's part of the EU, but indeed I can pick and choose and tell you that there are people in that country who cannot be safe in a situation. So to your mind, should we have these safe countries, or should we just have a moving target?

Mr. Andrew Brouwer: Thank you.

No, I would say that no country is safe all the time for everybody. The basic principle of refugee determination right now in Canada is that every claim gets decided on its individual merits. You explain why you are at risk and you have an independent expert adjudicator decide whether or not there's a basis for that claim, whether or not you need protection. That's the way to go. That's the fundamental, legally fair process.

I would say the very idea of the safe country list, at least from our position, is a no go.

The Chair: Thank you.

Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Thank you very much.

Mr. Brouwer, you talked in detail about the fact that the time periods are too short from the outset. I am convinced that, depending on the government, if claimants are required to go quickly to an interview, they will be forced to tell the truth; they won't have time to make up a story. The idea isn't clearly stated, but you can read it between the lines, see it implicitly.

Isn't it the opposite that could well occur? In other words, people who have experienced extremely difficult situations in human terms and who have been genuinely traumatized will have a lot of difficulty dealing with a process of that kind, whereas those who supposedly make up a story could well do better.

[*English*]

Mr. Andrew Brouwer: I think that's a fair analysis. From my perspective, reading this bill, and looking at the overall process here, it's been drafted by someone who has never sat down and worked with refugees to get a clear sense of how the system works, who has dealt one on one with refugees to hear their stories.

Absolutely, eight days.... You will have many claimants who will have possibly received bad advice on their route over to Canada. Maybe the smuggler they paid to help them get here, family members, or whoever, told them this is what they have to say. They come to us, as counsel. We work with them to explain the system, and it's over time that we get their true story.

[*Translation*]

Mr. Thierry St-Cyr: From what you've told us, you're opposed to the concept of designating countries of origin. The act currently states that the criteria will be defined by regulation. You warned us that, even if we included those criteria in writing in the act, as some suggest, that potentially wouldn't give us an example to support that statement?

[*English*]

Mr. Andrew Brouwer: Yes, I do, thank you.

A number of years ago, the Canadian Council for Refugees, Amnesty International, the Canadian Council of Churches, and John Doe brought a case in the Federal Court challenging the Canada-U.S. safe third country agreement. As you know, and as Mr. Coderre knows, in the act right now there's a clear provision saying that you can only designate a country as safe if.... Well, the minister can designate a country that complies with article 33 of the refugee convention, article 3 of the convention against torture, and in coming to that position, the minister needs to take account of the human rights background, the asylum system, and so on.

So we took that case to court and gathered a great deal of evidence, specifically about the U.S. asylum system. Now, of course, the U.S. asylum system is generally a decent one, but does it fully comply all the time with its international legal obligations? Certainly under Mr. Bush, no, it didn't.

We brought that case before the Federal Court. The Federal Court found clearly and unequivocally that the U.S. does not comply with article 3 of CAT, article 33 of the refugee convention. So under those two criteria in the act, the court found that, no, that was a mistake; the designation was inappropriate because the minister said it complies when it doesn't actually.

That case went to the Court of Appeal, and the Court of Appeal found very clearly that the court has no role, essentially, in assessing the decision of the minister with respect to the application of the criteria for designation.

So that's our worry. You may put very decent-sounding criteria into this act about what is a safe country and what isn't. It will look good. It will get passed in Parliament and we will end up with countries being designated for political reasons, for all sorts of reasons, and there will be no review.

● (1935)

[*Translation*]

Mr. Thierry St-Cyr: Ms. Taylor, a provision in this act currently prevents a person who has begun a process to claim refugee status from filing a humanitarian application. The person therefore cannot change his or her mind along the way, before the audience, and withdraw the file and submit a humanitarian application.

Aren't you afraid this provision is ultimately counter-productive? It could encourage people, once they realize the situation, to persist in their mistake rather than go the more appropriate route.

Ms. Vanessa Taylor: Yes, absolutely. I think that's quite a logical answer. Once the process has started, if people realize they ultimately may not have made the right decision, there's no recourse. They absolutely have to follow through with their decision and file an asylum claim. In those circumstances, especially if those people come from a designated safe country, they will be removed, even if considerations would have to be taken into account in view of their personal situation.

Mr. Thierry St-Cyr: Earlier today, someone raised the following possibility. Rather than continue allowing the PRRA, the pre-removal risk assessment, in the case of individuals who have been refused, we could simply ask the Appeal Division to reopen that case if extraordinary events occurred between the time of the Appeal Division's decision and the actual deportation.

Do you think that measure would be a little better?

Ms. Vanessa Taylor: I think it would be a reasonable measure. What is a greater concern for the Centre des femmes immigrantes de Montréal is the fact that no recourse is possible once the application is refused. If the file could at least be reopened by another entity in the event of special circumstances, that would not be a problem for us.

[*English*]

The Chair: Thank you.

Ms. Chow.

Ms. Olivia Chow: Thank you.

There's been discussion about whether an arm's-length group could do the designation of safe countries. Certainly we don't want to have this refugee reform process bogged down by partisan consideration, and I don't think the current minister wants that either. If that's the case, then certainly the hiring of the 100-plus officers should be done at arm's length. And if we support the safe countries—I don't myself, but there's been discussion about safe countries designation—then it should be an arm's-length group that recommends.... But so far, I can't come up with—I've been asking around—which human rights groups or organizations, or what kind of people, not only have the qualifications but are willing to put their name on the line to form a group. Or is there any existing group that could say they believe this country is a safe country? Are there any such human beings or such organizations out there?

When I asked Amnesty International that question they sort of gave me a look. They didn't say yes, but I think they were very clear. And neither did the Council for Refugees think there was any possibility.

In your mind, are there organizations out there that could provide clear, objective criteria to help with this, to be the advisory team that would make this designation?

● (1940)

Mr. Andrew Brouwer: That's the kind of thing that comes back to bite you later, but I frankly can't imagine a committed human rights organization or individual participating in a process like that. The basic legal principle is individual assessments of the merits of the claim, so as soon as you have a human rights organization participating in the designation of entire countries—

Ms. Olivia Chow: Like Human Rights Watch or something?

Mr. Andrew Brouwer: Right. One would hope Human Rights Watch wouldn't do this either, because, again, it goes contrary to the basic principle of individualized assessments. It would require that they buy into the idea that there is a country that is safe for everybody and that they are in a position to know. I mean, as a human rights activist or worker, who's going to want to participate in a program that's going to deny access to protection or due process for certain groups of people? I can't see it. I can't imagine it.

Ms. Olivia Chow: Ultimately, if this bill is passed the way it is, it will be the minister who would have to make that decision.

Mr. Andrew Brouwer: Right. Again, there are ways that we could try to mitigate some of the harm. Maybe you could work on criteria that became so clear and so difficult to pass that very few countries would actually succeed. You could try to set up some committee that was at arm's length to do it. But the basic principal is —

Ms. Olivia Chow: I don't want to be at a committee that wants anything to do with it.

Mr. Andrew Brouwer: No, and I think there would be serious questions about the credibility of any human rights organization willing to take on that role.

Ms. Olivia Chow: Everybody said the initial eight days are too short. Would 28 or 30 days be appropriate?

Mr. Andrew Brouwer: The length of time is okay, but the question about whether or not you're giving the individual refugee a chance to tell their own story is a separate issue. It kind of defeats the purpose. So let's say rather than eight days without counsel, you could have 28 days and you have a right to counsel. Essentially what you have is a mini hearing. Practically speaking, if the counsel is going to be there and the person is going to maintain the right to make their case, which is a fundamental human right, then what's the difference between that 28-day mini hearing to set up the claim and then the hearing that happens 60, 120, or 180 days later for the decision? It seems unnecessary duplication.

Ms. Olivia Chow: Are you arguing that we should skip the two steps and just have one step?

Mr. Andrew Brouwer: I'm not big on the status quo, but, generally speaking, I think the 28-day written PIF is okay. So maintain what we have and set up a process. Invest the resources and maintain a full complement of decision-makers so that you can actually have hearings quickly. Do it within roughly six months, with an opportunity to do it faster if a claimant says they've got their evidence and are ready to go, or an adjournment if they're still waiting for their evidence. Just schedule them as quickly as you can, as soon as the claim is ready to go.

Honestly, there's this sense, I think, among many people that refugees come here, make a claim, and then use it to wait as long as they possibly can. It's not true. Some might, but the vast majority don't.

Ms. Olivia Chow: Would four months be appropriate? I'm just trying to shorten it: a person would land in Canada and then within four months have the hearings either done or appealed and it's finished. Would four months be long enough?

Mr. Andrew Brouwer: Again, I wouldn't say it's appropriate to put timelines on the act. They're not right now, so I imagine they still wouldn't be. I think having a target of four months, with the possibility of getting an adjournment if the claimant for good reason isn't ready, is probably workable, with adequate legal aid, obviously.

● (1945)

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

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): In terms of a safe country of origin policy, what is being proposed is that claimants coming from designated countries have essentially the same access to what they have now—in other words, a full hearing before the refugee protection division and access to the Federal Court for judicial review. So why is this problematic or unfair? I just want to know.

Mr. Andrew Brouwer: There are a few things. The fact that we don't have a RAD now, eight years after it was passed, is a problem. It's been a problem for the last eight years, and it's been a problem before we even got the RAD.

Lack of an appeal continues to be an issue. The fact that this bill proposes to have it there for most is great, but the justification for denying access to a full appeal on the basis of a presumption of safety in a country, in our submission, is unfair. And it's unfair for a couple of reasons, of course. There is a combination of issues. There are multiple changes, and they all affect each other in this bill, particularly if we do have a situation where you've got an eight-day interview and a 60-day hearing.

Right now it's before a civil servant. We have no idea who that civil servant is going to be. Right now, the way the bill is drafted, as Mr. Showler and others have talked about, it could be a current PRRA officer, an enforcement officer, or anybody.

So if you're going to have civil servants who potentially work for the minister, or who actually do work for the minister, making that first decision, and they're making decisions about people their boss, the minister, has said are coming from countries that are safe, they are exactly the people who need an appeal to somebody who's impartial and protected from the minister, to a Governor in Council term-length appointee.

In my submission, it's backwards almost. That, again, is one of the problems we have with that proposal.

Mrs. Nina Grewal: The safe country of origin proposal also includes a provision to exempt certain groups from a country that would otherwise be designated or considered safe. Do you believe this is a necessary additional provision?

Mr. Andrew Brouwer: We have a problem with this provision because we have no idea what it means. Right now there is a huge amount of power being given to the minister to designate parts of countries, classes of people, and particular countries, without our having any sense of what the criteria are. When the Refugee Lawyers' Association started doing some advocacy work on this bill, we asked that Parliament send it to committee before second reading so that there could be a really careful review of exactly what the minister is proposing here. We still don't know what the minister thinks he's going to use that provision for. What kinds or classes of nationals will be affected, and what are the criteria he is thinking of using in their regard? We have no idea, so it's very hard to engage in a debate. It's a vacuum right now.

As a lawyer, a vacuum in the law is a very serious problem, because it prevents the courts from reviewing it and it prevents parliamentarians from knowing exactly what they're passing into law. Then we end up with an act where a minister can do anything he wants. Again, that is a core problem for us.

Mrs. Nina Grewal: I will give the rest of my time to Mr. Calandra.

Mr. Paul Calandra: How much time do I have?

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

Mr. Paul Calandra: Anyway, I'm going to share my time down the line.

I really do enjoy it when lawyers come to the committee, because they always seem to be so against anything that would limit their ability to bill—

Voices: Oh, oh!

Mr. Paul Calandra: —and allow this to go on basically forever.

I fail to understand, as a layperson, how your meeting somebody within eight days and getting their story and understanding their initial response for why they came to Canada, and then getting a copy of that, as somebody who might be representing them, so you can actually go through it, wouldn't actually help you prepare for a hearing that is 60 days away. Not only does it help you to prepare, because you have initial information you can then go by and on which you can then ask them even more pertinent questions when you actually meet them, but it also strikes me that after those 60 days there will also be the opportunity for these people—who are very deserving—to actually go on with their lives, as opposed to being put through the mill by lawyers and government.

I wonder if lawyers would still feel the same way if we put something in there that said after 25 or 30 hours you can't bill any longer.

● (1950)

Mr. Andrew Brouwer: We get 16 hours.

Mr. Paul Calandra: I wonder if you'd still feel the process was too short.

Mr. Andrew Brouwer: If I may say, when we are funded by legal aid we get 16 hours.

An hon. member: That's it?

Mr. Andrew Brouwer: That's it—16 hours.

Mr. Paul Calandra: And when you're not funded by them?

Mr. Andrew Brouwer: It's a combination of pro bono and whatever people can pay in their monthly payments, frankly.

Mr. Paul Calandra: How does the eight-day collection of information not help you build a case for your client?

Mr. Andrew Brouwer: It would make it easier. If I didn't care about whether or not I'm going to get the claimant's actual story out, certainly, it would make my practice easier. I can take their story, I can just ask them a couple of questions, and then go for it.

Mr. Paul Calandra: So eight days do make a difference.

That's all I need. I just wanted to make sure that the eight days actually allow you to better prepare your clients.

I don't have a lot of time, so I'll pass it on to Mr. Dykstra.

Mr. Neil Bouwer: As you know, that is not what I said.

Mr. Paul Calandra: You did just say that.

Hon. Jim Karygiannis: On a point of order, Chair, I think we need to give the witness an opportunity to clarify his answer, what he really said.

Mr. Neil Bouwer: Thank you.

May I?

Mr. Paul Calandra: On that point of order, if I could continue, I specifically asked if the eight days would help him build a case for his client. He said yes. I then wanted to move on to Mr. Dykstra, so he could ask a question.

An hon. member: That's not—

Mr. Paul Calandra: We're running out of time.

The Vice-Chair (Hon. Maurizio Bevilacqua): Mr. Brouwer, what is it that you said?

Mr. Andrew Brouwer: What I said was that if I didn't care about my client getting his true story out, yes, it would make my job easier. That's what I said. I'd be happy to elaborate if I have an opportunity.

The Vice-Chair (Hon. Maurizio Bevilacqua): I think the point was made. I think Mr. Calandra's point was made. Mr. Karygiannis's point was made.

Now we're going to see what point Mr. Dykstra is going to make.

Mr. Rick Dykstra: I have a question for both Mr. Sorrento and Ibrahim.

One of the issues we're facing in the discussion here is around timeframes. You guys have a lot of experience on the ground, listening to and presenting and representing potential refugees who come here and ask for your assistance.

You also said, Ibrahim, that eight days aren't enough. A number of folks have said that. What—

Mr. Salvatore Sorrento: Mr. Dykstra—

Mr. Rick Dykstra: I'll be done in a second, Sal.

Instead of talking about days, how about talking about the requirements that you actually need to get from your clients in order to be able to—as Mr. Calandra said—get prepared for the interview? You're really getting hung up on the number of days, and I want to get to the point of what you need to present.

Mr. Salvatore Sorrento: Mr. Dykstra, just so you know, and for the record, when the committee member asked Mr. Abu-Zinid about the eight days, I can tell you that Mr. Abu-Zinid is speaking for himself, because that's not the position of the board. I'm representing the board. I didn't get a chance to answer the question. I should have jumped in back there.

I just want it stated for the record that, in representing the board, I didn't come here to talk about the timeline, so I don't have a position on that. I'm going to leave that for other people.

I just want to say that on behalf of the board I'm not going to talk about the eight days, if that's okay. That goes to the original committee member, Mr. Dykstra, not to you. I didn't want to comment on the eight days when he asked the question originally.

I'll answer your question now for the eight days. I'm just going to confer with Ibrahim, Mr. Dykstra.

Do you want to tell Mr. Dykstra about the eight days?

Mr. Ibrahim Abu-Zinid: Yes. My point is that each refugee case is unique in itself, and when you put the issues in eight days, it's critical, depending on the case of the refugee. Some refugees are here and they are ready for counsellors in eight days. Some have passed through trauma and they want to settle down and get a hold of themselves and then interview with an officer. We have to be reminded that most refugees who are coming here are from developing countries, and to talk with an officer is an issue in itself.

We are pushing them into eight days. That is why I'm saying it's critical and it has to be looked at.

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

We will now move to Mr. Karygiannis. You have two minutes.

Mr. St-Cyr, you have two minutes...sorry, Ms. Thi Lac, you have two minutes.

● (1955)

Hon. Jim Karygiannis: Mr. Salvatore, I take it you are in St. Catharines?

Mr. Salvatore Sorrento: Toronto, sir.

Hon. Jim Karygiannis: Are you not representing the Folk Arts Council of St. Catharines Multicultural Centre?

Mr. Salvatore Sorrento: It is. I'm sorry, I misunderstood. I thought you were asking me where I am right now. It is St. Catharines, yes.

Hon. Jim Karygiannis: Can you tell us how much funding you got from CIC last year?

Mr. Salvatore Sorrento: For which programs?

Hon. Jim Karygiannis: All of them. That is part of your budget and what you declare, isn't it, sir?

Mr. Salvatore Sorrento: That's right. I can't tell you the exact amount. I can give you an approximate amount because I don't have that with me right now. I would say approximately $1.6 million for all of our programs.

Hon. Jim Karygiannis: If you don't answer correctly, sir, you might lose that. Is that why you're supporting the eight days?

Mr. Salvatore Sorrento: I'm sorry, I don't understand. I'm sorry, sir.

Hon. Jim Karygiannis: Basically, sir, if you don't want to support the eight days, you lose the funding.

No more questions.

The Vice-Chair (Hon. Maurizio Bevilacqua): Mr. Sorrento, you have a few seconds to respond if you wish.

Mr. Salvatore Sorrento: We'll do whatever we can to comply with the regulations. We'll do whatever we can to keep our funders happy.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): I want to thank those who are here today via teleconference. I also thank the witnesses who have travelled here.

I heard Mr. Calandra speak in not very flattering terms of lawyers' role and work as consultants. I would like to have your opinion on the fact that the minister did not include regulations on immigration consultants.

According to one rule, a person who arrives in Canada will have eight days to tell his or her story and will not be entitled to appeal the decision. If that person happens upon a fly-by-night consultant or an individual who provides bad advice, that person won't be entitled to file an appeal. Eight days is not very much time when you have to find someone who is empowered to provide advice, who is accredited and who is not.

Don't you think the minister should have included guidelines on consultants, immigration consultants in the bill? We often hear about false claimants, that is to say claimants who file false claims, but people rarely talk about the fact that these people are sometimes poorly advised by consultants.

[*English*]

The Vice-Chair (Hon. Maurizio Bevilacqua): Who's going to answer that question?

Mr. Andrew Brouwer: Thank you.

That's a critical gap in this bill, or at least in the series of announcements that were made with this bill. There's a serious problem with the role of consultants right now, and I think it has been recognized by most parties. They're not adequately regulated.

You're absolutely right. With the eight-day interview, competent counsel, as I think Mr. Showler said, will not step up and be in a position to represent someone at that eight-day hearing. They will be left with whatever consultant is willing to do it for the money.

That said, I would make Mr. Calandra happy, I'm sure, if I said that lawyers are not all great either. There's a mix of lawyers, and I think there needs to be—

Mr. Paul Calandra: I already know that.

Mr. Andrew Brouwer: —better regulation of counsel, consultants as well as barristers and solicitors, representing refugees in all aspects.

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

Ms. Olivia Chow: Can I ask one more question?

The Vice-Chair (Hon. Maurizio Bevilacqua): I can give you a couple of minutes.

Ms. Olivia Chow: I need just one minute, on the PRRA.

Right now only 2% or 3% get the last-minute risk assessment. Right now it says for one year you cannot get PRRA. What difference does it make to most of the applicants? You're entitled to PRRA right now with this new law, but since it takes so long to get there, you can still get deported.

● (2000)

Mr. Andrew Brouwer: Right.

Ms. Olivia Chow: What is the downside of that?

Mr. Andrew Brouwer: Of the one-year PRRA restriction?

Ms. Olivia Chow: Yes, in this bill.

Mr. Andrew Brouwer: Right now, under both section 7 of the charter and under international law, particularly article 3 of the UN Convention Against Torture, there is a bar on deporting someone to persecution or torture. The Supreme Court, in the case of Suresh, and many international tribunals and other Supreme Court cases, has repeatedly said that Canada cannot deport someone to a risk of torture.

The PRRA exists for that one last review, to make sure that Canada doesn't make a mistake and deport someone to persecution and torture. If we limit this access, Canada will be deporting people. Of course, it's a tiny number.

One of the proposals we have made is to dump the current PRRA process. As you say, it's a tiny percentage that are accepted. Switch it into.... If we're going to have an IRB and a RAD that are truly expert, independent decision-makers, give them full authority for making risk assessments and allow people to reopen their claim if they can establish that there's new evidence or a change in circumstances during that one year.

Ms. Olivia Chow: Perfect.

Just to summarize, you don't mind this part of the bill to get rid of the PRRA or the one-year bar, as long as the Refugee Appeal Division has the power, if that country all of a sudden breaks out in civil war or something like that, to enter that in as new evidence so that the person would not be deported.

Mr. Andrew Brouwer: Yes, as long as we're very careful about making sure that the RAD has all the jurisdiction it needs to reopen, including a specific change in personal circumstances.

Ms. Olivia Chow: Does it now under this bill?

Mr. Andrew Brouwer: No, absolutely not. This is not charter-compliant. We will be deporting people to torture.

Ms. Olivia Chow: Are there some recommendations you can give us so that we can improve it and give the appeal division that power, so that if that country all of a sudden breaks out in violence of some kind, there would be a last-minute—

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

Basically, if the proposal is changing conditions, they should be taken care of.

But I have to move along to Ms. Wong, who has two minutes.

Mrs. Alice Wong (Richmond, CPC): I just want to set the record straight. The IRB chair was here last week and he did mention that the minister did not have the authority to select the IRB division. It was the IRB chair himself, together with the civil service, who will select these people.

The IRB also has discretion to adjourn the interview if the claimant appears vulnerable or traumatized.

I want to address a question to Ms. Taylor.

Are you aware of the fact that in England they have a list of designated countries? However, women from Ghana are designated as a sub-population that can qualify as refugees, but men cannot. Do you think that provision would address your concern?

Ms. Vanessa Taylor: As I mentioned in my presentation at the beginning, in the interest of women who are seeking asylum, if the designated country of origin were to be implemented, we would require that special attention be given to countries that do have problems, especially with regard to discriminating on the basis of gender. This is solely in the interest of women. We would be completely in agreement with that.

Mrs. Alice Wong: Certainly we all want to make sure that women from all over the world will be protected against any violence or any mistreatment.

We've also been talking about time for women. Actually, they have to wait for 18 months to know whether they are even qualified to stay. That's what the system is right now. Do you think it's really a problem?

Ms. Vanessa Taylor: I do not think it's fair, but again I think we have to be careful that if we do accelerate the determination system, we do it in a fair manner.

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

Mr. Brouwer, thank you, and Ms. Wong as well. Mr. Sorrento from St. Catharines, and Mr. Abu-Zinid, thank you so much for your input.

As you know, we seek input from individuals who have a lot to offer, and we learn a great deal. As a matter of fact, because of the interest this committee has in listening to individuals such as you, I have sought and found agreement from all parties on both sides that notwithstanding the present work plan of the committee, Tuesday, May 25, from 18:00 to 21:00; Thursday, May 27, from 15:30 to 17:30; Thursday, May 27, from 18:00 to 21:00; and Monday, May 31, from 18:00 to 21:00 will be designated days to hold hearings. That's just so we know that.

This is the only item that we found agreement on, and we will not be discussing anything further. That is also because of the respect we have for the next witnesses, who are already here.

Thank you so much.

● (2005)

Ms. Olivia Chow: Do we need to submit more names?

The Vice-Chair (Hon. Maurizio Bevilacqua): Yes, you can do that. Every party should be submitting more names as soon as possible to allow our clerk and staff to fill the spaces.

Thank you so much.

We will suspend for two minutes.

● (2005)

(Pause)

● (2010)

The Vice-Chair (Hon. Maurizio Bevilacqua): I'd like to call the meeting to order and welcome everyone here.

As you know, pursuant to the order of reference of Thursday, April 29, 2010, the order of the day is Bill C-11, an act to amend the Immigration and Refugee Protection Act and the Federal Courts Act. I kindly ask all members to take their seats.

Yes, Mr. Coderre.

Hon. Denis Coderre: I have a point of order. I look behind Mr. Greene and I'm offended to see a Flames shirt. I'm from Montreal, and Mike Cammalleri is now with us.

Do you have a problem, sir? Do you want to talk about it now, or are you okay?

Mr. Michael Greene (Immigration Lawyer, As an Individual): I want you to know that I'm a lifelong Habs fan, and I'm quite happy to be cheering for the Habs right now.

Hon. Denis Coderre: Thank you very much.

The Vice-Chair (Hon. Maurizio Bevilacqua): Mr. Greene, to accommodate Mr. Coderre, you will have to do this presentation standing up.

Voices: Oh, oh!

Hon. Denis Coderre: So you'll hide the logo.

The Vice-Chair (Hon. Maurizio Bevilacqua): It's 8:15 p.m., and everybody's kind of....

We will hear from Barreau du Québec, Catherine Dagenais, Service de recherche et de législation; and France Houle, a lawyer. Then we will hear from Parkdale Community Legal Services, Geraldine Sadoway and Rathika Vasavithasan; and we have Michael Greene as well.

Yes, Mr. Dykstra.

Mr. Rick Dykstra: Just on a point of clarification, we're now starting about 15 minutes late. Are we planning to only go to 9 o'clock? And are we going to cut back on everyone's speaking time just a bit?

The Vice-Chair (Hon. Maurizio Bevilacqua): No, no, absolutely not. We will be going until 9:15 p.m. Is that okay with the committee? Is that okay with the witnesses as well?

Some hon. members: Agreed.

Witnesses: Agreed.

● (2015)

Mr. Rick Dykstra: That's fine. I just wanted to clarify.

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

Let's start with Catherine Dagenais and France Houle.

[*Translation*]

Ms. Catherine Dagenais (Lawyer, Research and Legislative Services, Barreau du Québec): Mr. Chairman, ladies and gentlemen, first I want to thank you for your invitation. My name is Catherine Dagenais, and I am a lawyer with the research and legislation service of the Barreau du Québec. The Barreau du Québec has slightly more than 23,000 members. It main mandate is to protect the public. It carries out that mandate by ensuring, in particular, compliance with the rule of law, the continued separation of powers, the promotion of equality for everyone before the law and protecting the often precarious balance between citizens' rights and the powers of the state.

As a lawyer in the research and legislation service of the Barreau du Québec, I coordinate the business of the advisory committee on immigration and citizenship law of the Barreau du Québec, which consists of some 10 immigration and citizenship law practitioners. The committee analyses various immigration issues and has been given the mandate to examine Bill C-11.

I am here today with Ms. France Houle, member of the advisory committee on immigration and citizenship law of the Barreau du Québec. Ms. Houle was admitted to the Barreau du Québec in 1989. She is a professor at the law faculty of the Université de Montréal, where she teaches administrative and immigration law.

The Barreau du Québec's comments today concern Bill C-11. I will briefly outline the Barreau du Québec's position, which was developed in our letter of May 7. My colleague will be able to add any relevant information and answer your questions.

The Barreau du Québec is pleased with the significant effort that is being made in an attempt to find a balance between faster and equitable treatment of refugees. It is pleased with the implementation of an appeal mechanism for refugees. The Barreau du Québec had been calling for a genuine appeal mechanism for some time. This Refugee Appeal Division will have the advantage of developing expertise and a body of case law. However, some factors must be reviewed in order to prevent harmful effects on a vulnerable population.

The Barreau du Québec is particularly concerned about certain time periods proposed in this bill. The Barreau du Québec therefore proposes four weeks instead of eight days for the information gathering process. It also suggests a period of four months before the first hearing in the Refugee Protection Division. Refugees must be allowed time to find competent lawyers, to obtain evidence from their country of origin and to approach legal aid.

A competent lawyer handling the case will facilitate the processing of that case. These lawyers need time to prepare, to provide good advice and to represent their clients. Adequate preparation is therefore necessary from the outset. In addition, if there are deficiencies in the first hearing, the entire system risks going off the rails. The IRB's resources must therefore be cautiously used, avoiding numerous postponements.

According to the bill, first-level decisions would be made by officials. The Barreau du Quebec believes that the positions should be offered to everyone, both members of the public and people working in the various departments. Care must also be taken to ensure the independence and impartiality of the proposed first-line decision-makers.

Another major concern for the Barreau du Québec is the designated countries of origin and the possibility that the minister may designate countries whose nationals would not have access to appeal. The country-related criterion is shocking with regard to access to justice and equality for everyone before the law. The Barreau du Québec is opposed to this two-level appeal system.

Furthermore, if this solution must be considered, we must at the very least ensure that there are guarantees and a fair and transparent process for designating those countries. The committee must include independent experts with considerable expertise in human rights and humanitarian law, as well as public representatives.

In addition, and this point is important, the criteria shaping this process of designating safe countries should be clearly set out in a statutory instrument, not by order or regulation. These criteria should also be subject to comment.

As regards the appeal mechanism, the Barreau du Québec notes that appointments to the Refugee Appeal Division would be made by cabinet. The Barreau du Québec repeats that all political appointments must be avoided and that emphasis should be on competence in order for the proposed reform to work. In its letter, it suggests an appointment process that we invite you to consider. I would now ask Ms. Houle to talk about the suggested process.

Ms. France Houle (Lawyer, Barreau du Québec): At the federal level, there is no selection or recruitment process for the members of administrative tribunals. No reform has been conducted in this area within the federal government. There is one in Quebec, under the Act respecting administrative justice, which was passed in 1996. For 15 years now, there has been a member selection and recruitment process in Quebec for the four major administrative tribunals, the TAQ, the Régie du logement, the Commission des relations du travail and the Commission des lésions professionnelles. None of those tribunals is as big in terms of the number of board members appointed as the number of cases heard by these agencies.

What is important to consider is that administrative justice is now as important as, if not more than, civil justice and criminal justice in terms of the number of cases settled every year. The Immigration and Refugee Board of Canada very definitely falls into this class of administrative tribunals, which are purely jurisdictional. In this class of genuine administrative tribunals, the Supreme Court of Canada has evolved in its case law, which concerns the guarantee of independence of those organizations. One of the points on which the court insists, particularly in the Ell and Bell cases, is precisely the recruitment and selection of members. The court has not yet rendered a clear decision on the subject, but there are trends, and the federal government will eventually have to take note of them, in particular because, in the Bell affair, it was a federal administrative tribunal that was at issue.

The procedure we are proposing is essentially the one that exists under the Act respecting administrative justice.

There should therefore first be a public notice of call for applications to state the qualifications and skills required of candidates.

Second, a committee should be formed—including one member of government, the chair of the IRB and a lawyer from the bar association, preferably that of the province in which the candidate is appointed—which would be responsible for examining the files of candidates and selecting files for interview.

Following the interview process, the committee would be asked to prepare a list of names of individuals suitable to be appointed as IRB board members, and the cabinet would have to select individuals to be appointed board members from that list. Candidates would no longer be stricken from the list; they would have to stay there.

Lastly, terms should be fixed. Terms would stop being limited in federal law to a renewable five-year term. If a member's term is not renewed at the end of the five-year period, that member would have to be told why, and would have to be given a chance to state his or her point of view on the reasons why the term was not renewed.

That, in a nutshell, is the procedure we are proposing.

I'm going to hand over the floor.

● (2020)

Ms. Catherine Dagenais: I simply want to conclude with the humanitarian applications because this is an important point.

The one-year ban on humanitarian applications is a concern for the Barreau. The Barreau wishes to recall that humanitarian grounds exist for the purpose of addressing situations not provided for by law. We believe that the humanitarian application is a necessary recourse in examining human rights issues, including the greater interest of the child and the potential risks for individuals. The Barreau du Québec is pleased with this bill and notes that there must be major amendments.

Thank you for your attention.

[*English*]

The Vice-Chair (Hon. Maurizio Bevilacqua): We will now go, through video conference, to the city of Toronto. We'll hear from representatives from Parkdale Community Legal Services: Geraldine Sadoway and Rathika Vasavithasan.

Welcome.

Ms. Geraldine Sadoway (Staff Lawyer, Immigration and Refugee Group, Parkdale Community Legal Services): Thank you. My name is Geraldine Sadoway, and Rathika Vasavithasan is with me.

I'm a staff lawyer at Parkdale Community Legal Services. It is a 40-year-old clinic in Toronto that has produced some of the major lights in immigration and refugee law. In particular, James Hathaway was once one of our students at Parkdale Community Legal Services.

Rathika is a law student, but prior to that she was involved in working with immigrant communities. She's also a representative of the Tamil community that has been displaced. Her family was part of the government-selected refugee program, but she is part of a community that includes many people who came to Canada as refugees and claimed refugee status here.

I'm representing Parkdale, but I'm also representing the many workers in the community legal clinics in Ontario and other parts of the country who work on behalf of perhaps the most vulnerable immigrants and refugees who fall through the cracks of our current system. We deal with people who are often very deeply traumatized; people who have mental health conditions; women, children, elderly people; and people who have survived torture and other types of other terrible, traumatic experiences.

Law students in our program, such as Rathika, usually come with a very rich experience working with refugees and immigrants.

We're presenting today on the changes to section 25, the humanitarian and compassionate section of the act. Those are proposed subsections 25(1.1), 25(1.2), and 25(1.3). We are arguing that they should simply be deleted from the bill. These humanitarian sections will drastically affect the communities we serve.

They propose that a person will have to choose between making a refugee claim or filing a humanitarian application. In other words, if you make a refugee claim, you're not eligible to file a humanitarian application while your refugee claim is pending, and if refused, for one year after.

Moreover, proposed subsection 25(1.3) of Bill C-11 provides that if you do make a refugee claim, it is refused, and you manage to make a humanitarian application after one year, you can't base your humanitarian application on any of the dangers or risks you raised in your refugee claim. Furthermore, this section says that no hardship or risk factors can be raised at all in humanitarian applications if those same factors could have been the basis of a refugee claim.

This is the most dramatic limitation of ministerial power we've had since at least the 1950s. That's the act I can remember having reviewed a long time ago. But certainly in the 1977 and subsequent acts, we always had ministerial discretion to consider humanitarian and compassionate grounds, and that is now going to exclude factors that could be the basis of a refugee claim.

First of all, there's no efficiency in these changes, because with the current process we consider humanitarian claims in a different stream. They are dealt with by immigration officers, not by the refugee board. There's a paper application, not an in-person application. And the processing of such a claim does not stop removal. So there's no benefit. There's no efficiency in saying we're going to get rid of the humanitarian application.

If you have a pending humanitarian claim and you've been refused refugee status, you can still be removed from Canada. I know that; as a lawyer I've dealt with those cases.

● (2025)

You can only stop removal if either the immigration officer agrees to defer removal or you get a Federal Court judge to recognize that you would suffer irreparable harm if you are removed. We have done that as well.

What we're doing is setting out an impossibly difficult situation for the person coming to Canada who has left a problem in their home country. It will be very difficult to advise those people.

I'd like Rathika to hold up now for the camera a little image we made, a little Venn diagram. What you have is a large grey area of what constitutes a well-founded fear of persecution, which is the test for convention refugee, and what does not meet that stringent test but does constitute very serious hardship. So getting accepted as a refugee results in much stronger protection—non-refoulement. You can't be returned to the country where you fear persecution.

Accepted refugees and their family members are granted exemptions from certain inadmissibilities, such as financial and medical. But deciding whether someone should be found to be a refugee is not black and white. It's not an issue where you're a refugee or you're not a refugee. There are difficult decisions to be made, and that grey area is where a lot of the cases would fall.

Some cases that would be accepted as refugees by one board member would not be accepted by another, but they could be accepted on humanitarian grounds. We've seen many examples of this. I've set out examples in our brief of people who even the refugee board said at the hearing that what they're facing is very severe discrimination and it's a terrible experience they've lived through, and that's not enough to find them to be a refugee, but they have a strong humanitarian case. We have taken those cases and filed a humanitarian application after the refused refugee claim and quoted from the board.

The board can't decide on a humanitarian case. They can't say, okay, but I'm going to accept you on humanitarian grounds. But the immigration officer can look at what the board saw and that they found the person credible and accept them. Now we're just going to throw that away. We're going to say that all those people who have very strong humanitarian cases will either win the refugee claim or they're gone. You can't base your humanitarian case on the very factors the board said were strong humanitarian cases.

● (2030)

The Vice-Chair (Hon. Maurizio Bevilacqua): You'll have to wrap it up. We're already at eight minutes.

Ms. Geraldine Sadoway: Okay.

That delay of one year can also result in a risk to life, because something new can arise that is a humanitarian issue, which cannot be raised after the refugee claim has been refused.

We had one example of a woman who went into a coma. She had type 1 diabetes. She was facing removal with her daughters to Angola. Her claim had been refused. According to her doctors, without injections of insulin every day, she would die within three weeks. That case was a very strong humanitarian case. After a refusal of a refugee claim, she was accepted on humanitarian grounds. Now she and her daughters are being landed. That could not be done under this new regime.

The Vice-Chair (Hon. Maurizio Bevilacqua): Thank you very, Ms. Sadoway. You'll have an opportunity during the question and answer session to expand on that.

Ms. Geraldine Sadoway: Thank you.

The Vice-Chair (Hon. Maurizio Bevilacqua): We'll now move to Mr. Michael Greene, who is in Calgary—hence the sweater. Go ahead.

Mr. Michael Greene: Hence the sweater. Yes, I'm in Calgary. I'm conscious of the fact that there are probably some westerners out there, people who'd like to cheer the Canucks tonight, so we'll try not to drag it out.

My name is Michael Greene. I'm a practising immigration lawyer in Calgary. I have been practising law since 1984 and immigration law since 1987. I work in a firm where we practise only immigration law. I do not, in fact, do refugee cases any longer—there are other lawyers in my firm who do them—but I've been working with this system since it started in 1989, so I'm reasonably familiar with how it works now.

I've been active in the Canadian Bar Association for 20 years. I am a former national chair. I was the national chair at the time we were developing IRPA, so I know a little bit about the legislative process and how that works. And I've appeared before this committee and other committees numerous times.

I've been invited to express my opinions as an individual, and that's what I'll do. I'm not representing any organization, although I do share concerns with many other groups and organizations and individuals who are speaking before you.

I have concerns about the way the system has been working. I think it undermines public confidence in our overall immigration and refugee laws and processes. It's fraught with delays. The slow process attracts non-genuine claimants, who can sometimes extend their stays for years, as we all know. And for people who do have legitimate claims, often the woes they've suffered in their lives are compounded by the extended time the process takes.

The high influx of claims from some countries, especially when their cases are seen as being less compelling than others, results in visa imposition. In fact, that happens all the time when there is a high influx. That makes it difficult for countries, as we saw with Mexico. It's difficult for the European community. There are definitely problems that arise when we use the visa method to try to control the refugee determination process.

With all these concerns, steps to speed up the process are certainly very welcome. I think most Canadians sympathize with the minister's stated intention of streamlining the system or making it so that we can recognize genuine refugees and actually deter people who have actually no basis for making a claim.

Having said that, I have a lot of concerns about the solutions being proposed. First, I'd like to review the fact that many of the things that can be done to speed up the process are non-legislative solutions. Some have been proposed in conjunction with the current bill, and others could be added. The limited resources at both CIC and the CBSA are the cause of much of the delay in the system. The CIC is stretched to the max. They can't get to their H and C claims, and they can't get to their PRRA decisions. The result is that often there is an 18-month or longer delay before they even initiate a PRRA. Then there is quite an extensive delay in deciding it. It's not because it takes a long time to process an application; it's because it sits in a queue.

It's the same thing with removal. I'm quite close with some of the people here who are in removals. I've developed friendships over the years. And I know they feel very stressed because they have to set priorities and aren't able to get around to doing the different things they should be doing. Sometimes these removal cases languish for months, if not years, because of criminals or greater priorities or whatever. So putting more resources into the system, which the minister has proposed, is a darned good idea. It doesn't require a change in the law.

The other thing is that our board can work more efficiently. We saw during the chairmanship of Jean-Guy Fleury that he had processing times on refugee claims down to six months. That was because of a very concerted effort and the use of new procedures. But also, everybody buckled down and worked really hard. The system worked really well. Unfortunately, reappointments were not made, and new appointments were not made to fill those spots. Things got a little out of control at the same time as there was quite a high volume coming in.

Much of the delay could be eliminated just by attending to properly making sure that we've resourced our board and have resourced the agencies that deal with the situation.

One of the things I didn't say is that I teach the immigration law course at the Faculty of Law here in Calgary. We talk about processes a lot and how they work. We talk about safeguards and due process and where it exists and where it doesn't.

In terms of what's proposed, I would just like to comment that this proposed two-step determination process is very welcome. It's been called for, for a long time. There really isn't a good backstop now in the case of a bad decision, and we get bad decisions. Humans make mistakes. Sometimes people have poor representation. Different things happen. The two-step system will, I think, greatly improve the quality of decision-making.

● (2035)

I would like to endorse the proposals of the Barreau du Québec with respect to political and non-political appointments. I think that's been a chronic weakness since this board started in 1989. We've had some bad appointments, and that makes for bad decisions. There's no need for it; we could improve the quality.

The two-stage process I think would justify restrictions on the PRRA, which has been a very unsatisfactory appeal process. With a success rate of around 2%, it's a colossal waste of money. The money would be much better spent on the RAD, where you have a more effective appeal process. I think if we have the two-step process we can justify cutting back on access to the PRRA. I don't see the justification for cutting access to the humanitarian and compassionate, and I'll talk about that later.

The idea of mandated processing times in the legislation is attractive, in that regardless of who the government is, if they keep to the mandated times they'll adequately resource the board. The problem is—and this is where I get into some of my serious concerns about the legislation—the proposed mandated times are just not workable. The eight days and the 60 days...you can't function in that environment. For instance, it takes so long to get legal aid to appoint counsel right now that you can use up most of that time before you've even met your client.

This would be unthinkable—absolutely unacceptable—in the civil law and criminal law contexts for the government to mandate that your civil lawsuit must be heard within 60 days. But we're proposing doing it for people whose very lives are at stake, where they're facing torture, persecution, and possibly even death. While the idea of mandated times is attractive, the proposed times need some work. I don't think it works. Every lawyer I've talked to in this field says that's not workable. Even my partner, who's a very senior lawyer in this area, says he doesn't think he'd want to practise in that area because he doesn't think it would be true justice.

There are concerns as well about the minister's list. Again, I think it's been expressed by many groups, and I won't rehash it too much: the danger is of politicization in the process.

We have a current minister who is well-intentioned, and I remember when we brought in IRPA that we had a well-intentioned minister. There were a couple of provisions, namely denying the right of appeal to persons with criminal convictions, and the minister said, don't worry, I will use my discretion to make sure that good decisions are made to let those people stay in deserving cases. Well, she didn't stay as minister too long, and we've seen a succession of ministers where there really hasn't been that discretion exercised.

I don't like the broad powers given to ministers, and I think there should be some criteria if we're going to have a list at all. As well, I think there has to be a real look at the consequences. I would be much more supportive of the consequences of being from a listed country be that you have a hyper-expedited process, that your claim is dealt with really quickly. That would deter non-genuine claimants from coming if they knew they were going to be out of here pretty fast, that they couldn't languish in the system and milk it for all it's worth.

I'm very much opposed to the denial of access to the fail-safes, to the backstops that exist in the appeal process and the humanitarian process. The humanitarian and compassionate grounds—and this doesn't come from me originally—are the grease that makes the system work. Often we have arbitrary or hard and fixed rules to fit into a category, and it's the humanitarian grounds that catch the people who have compelling reasons to be here but don't quite fit within one of the narrow confines of the accepted classes. It's been a major feature of our system, for as long as I know—and I think for a lot longer than I know—and I teach immigration history. I would hate to see it eroded away here. I think it's a fundamental part of our system.

It's tempting to—

● (2040)

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

You're going to get a chance to expand on your points during a question and answer session.

It's a seven-minute round, and we will begin with a former minister, Mr. Coderre.

[*Translation*]

Hon. Denis Coderre: Thank you very much.

I'm going to start by asking a very brief question. I know it's sometimes difficult not to answer with a yes or a no, but you'll see where I'm heading.

My question is for Ms. Dagenais and Ms. Houle. In its present form, do you get the impression that this bill would not pass the test of the courts with regard to the Canadian Charter of Rights and Freedoms? Yes or no?

Ms. France Houle: There are major problems concerning section 7 and the protection of fundamental justice. There are clearly problems in that regard. Would it pass the test of the courts or not? That's another question. That said, some problems can definitely be raised.

Now this system will often be compared with the one in Australia, for example. However, it should not be forgotten that there is no Canadian Charter of Rights and Freedoms in Australia. That's a big difference.

● (2045)

[*English*]

Hon. Denis Coderre: Mr. Greene, do you believe that in its actual form this bill would pass the test of the court?

Mr. Michael Greene: Sir, I add my concerns to those of the Bar Association. I've read their brief. They have great concerns that at the very least it would result in a great deal of litigation. I think if you look at the Singh decision, which resulted in the creation of our existing system, there's a real concern here that this wouldn't pass the tests that were in the Singh decision. It would either fall to the charter or the Bill of Rights.

Hon. Denis Coderre: Ms. Sadoway.

Ms. Geraldine Sadoway: I agree. I think there will be charter challenges coming out of our ears.

[*Translation*]

Hon. Denis Coderre: We've negotiated a safe third country agreement in the context of a process under the aegis of the United Nations. Now we're talking about designated countries, which is something else entirely. Don't you get the impression that talking about designated countries now removes the very value of the immigration and refugee system, in the sense that every case is specific?

I'm speaking to Ms. Houle and Ms. Dagenais.

Ms. Catherine Dagenais: We're now talking about the country of origin designation rather than the safe countries of origin. That's one indication and it allows a lot of discretion. The wording as such had to be reformed.

Hon. Denis Coderre: Personally, I'm totally opposed to the countries of origin idea. Saying at the outset that everything's fine in such and such a country, when we know perfectly well that, as every case is specific, there are realities of sexual violence or violence against homosexuals in certain countries... There are a host of examples like that. That's why it's important that every case be specific.

Ms. France Houle: That's the problem, in fact.

By countries of origin, we're not specifically stating exactly what we're talking about. In itself, the act poses arbitrary problems. In addition, the criteria will be set by regulation, whereas, in the past 20 years, it has been a legislative policy, particularly in the federal government, that criteria stripping people of rights are set out in the act not in regulations.

Furthermore, I just want to take two seconds to say that, as a result of the process of shaping regulations in Canadian law, a little consultation is now possible, particularly under the Cabinet Directive on Streamlining Regulation. However, from the moment there is an amendment to regulations, consultation becomes less and less important.

So, ultimately, the government could make nice regulations in order to please everyone at the outset and, little by little, remove important elements from those regulations. That poses a problem. Simply with regard to legislative policy, the criteria should be in the act; and the process in the regulations.

Hon. Denis Coderre: I entirely agree with you.

Let's talk a little about administrative justice. In your view, there was previously no system. When board members were appointed, there were examinations. It was open to everyone. A list was prepared based on those who passed the exam, and there was a Governor in Council appointment. Do you think we should go much further than that?

Ms. France Houle: [*Inaudible—Editor*] the act, now. That's purely administrative. So the government can change that, as it wishes, from one day to the next. Moreover, that's what we've seen, from the switch from Mr. Fleury to the current chair of the IRB, whose name I don't remember.

Hon. Denis Coderre: However, you're in favour of there being, for example, officials at the first level, like super officers who would have this training, and of the Immigration and Refugee Board being the second level, which would be the appeal level. You're in favour of that.

Ms. France Houle: What I understand is that officials are part of the board, which is the first level within the board. Then there's an appeal, again within the board.

However, the processes of appointing officials to the first level and to the Appeal Division are different. The officials are appointed under the Public Service Employment Act and the members of the Appeal Division are appointed by Cabinet. So the procedure I was proposing earlier would apply to the Appeal Division. As for the officials, they are appointed under the Public Service Employment Act.

Hon. Denis Coderre: I think there's as problem. Professor Peter Showler, former chair of the Immigration and Refugee Board of Canada, has extensively studied this question and he may be right about it.

Don't you think a hybrid or single model would be needed as a result of the importance of this kind of oversight? Perhaps it should be separate, but subject to the act. What would be needed is an appointment process, with public notice, but one that would really be separate. If we went through the Public Service Commission, that would not necessarily guarantee, in all respects, that these individuals would necessarily be the best.

● (2050)

Ms. France Houle: In structural terms, you can train a somewhat bizarre creature. To my knowledge, apart from the Immigration Division, there are not a lot of models like this one. We appoint officials who we say are independent and impartial, but they are nevertheless public servants. They are therefore nevertheless part of the bureaucratic machinery, since they are appointed and are there to serve the government. That's what it means to be a public servant. So there's a problem in that regard. The status of these people isn't clear. That works at the Immigration Division, to the extent that most of these officials work on detention issues. The connection between the government and detention is important. When it comes to refugees, a significant problem arises because the entire question of justice and equity arises in strong terms under the Singh decision.

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

Mr. St-Cyr, go ahead, please.

Mr. Thierry St-Cyr: Thank you for being here. I'm pleased to have had the chance to hear a little French at the end of the evening. It keeps me awake and in shape.

You talked about the regulatory aspect of designation. Perhaps you can guide us with regard to clause 12, which introduces the new section 109.1. This reads as follows:

> 109.1(1) The Minister may, by order, for the purposes of subsection (3), designate a country or part of a country or a class of nationals of a country if, in the minister's opinion, they meet the criteria established by the regulations.

Then—and here's where I would like you to enlighten us—it states:

> (2) An order referred to in subsection 1 is not a statutory instrument for the purposes of the *Statutory Instruments Act*. However, it must be published in the *Canada Gazette*.

Can you enlighten the committee as to what this section means?

Ms. France Houle: Yes, it means that the instruments are not subject to the regulatory process provided for by the Statutory Instruments Act. Consequently, no draft regulations will concern the matter of consultation. Consultation is provided for by directive. Nevertheless, this is now part of the regulatory process. Then there is publication in the *Canada Gazette*.

So there is a process that must be followed under the Statutory Instruments Act, which will not apply to these orders. The government may simply designate a country without there being a procedure to follow as such, except to submit the names to cabinet for approval; that's all.

Mr. Thierry St-Cyr: So it could be a little like imposing visas in the middle of summer, like that. Parliament isn't sitting, we meet on a weekend, and we have that passed and there's no additional measure.

Ms. France Houle: That's correct.

Mr. Thierry St-Cyr: That's good.

In your presentation, you also spoke at length about board member appointments. You suggested a model to us, if I correctly understood, that was based on what's being done in the administrative tribunals in Quebec. We're talking about three members, one government representative, one board representative, in this case, and a lawyer from the province concerned. That's how it is in the administrative tribunals of Quebec.

Is that also the method used in superior tribunals, which are currently being discussed, such as the Bastarache Commission, or is it another mechanism?

Ms. France Houle: These are two separate mechanisms, but they are very similar. The Bastarache Commission, in particular, is examining the procedure for appointing Quebec Court judges. That process is very similar to the appointment process for members of the TAQ, the Tribunal administratif du Québec, which is also being examined by Justice Bastarache. Yes, the processes are very similar to each other.

Mr. Thierry St-Cyr: Lastly, this process won't necessarily reassure a lot of people. As long as a politician somewhere is making an appointment, there is always a fear, or a possibility of partisanship. Lastly, I won't get you to state a position on that.

Ms. France Houle: No, but I do want to say something. What is important is the competence of the individuals. That said, avoiding all political issues is quite impossible.

There is a matter here of public education that has to be done. It's the government that decides who will be appointed and, in the choice..., if you say choice, it's because there are one, two or three possible individuals. The criterion that will ultimately be used to determine who must be selected should be competence first and foremost.

● (2055)

Ms. Catherine Dagenais: I'd also like to suggest that at least 50% of board members be member lawyers of a bar association of at least 10 years standing.

Mr. Thierry St-Cyr: All that concerns the part on board members.

As regards the officials who will be at the first level, earlier today it was suggested that there be an appointment method that is somewhat similar to that used by the Chief Electoral Officer to appoint returning officers. He can therefore go directly to the general public, somewhat shortcircuiting the Public Service Employment Act, to really get the people he considers most appropriate.

What do you think of that proposal?

Ms. France Houle: That's a possibility, but that appointment method exists solely for what are called administrative oversight agencies, such as the Auditor General, the Chief Electoral Officer, the Privacy Commissioner and so on.

Independence is granted at that level, which makes it possible to get the most competent people possible. Will that really solve the problem of appointing officials or do we want to have people who will nevertheless be appointed by cabinet for a term that will be renewable? These are options, but in fact, the problem—

Mr. Thierry St-Cyr: That's assuming they keep officials at the first level. How will they be selected? Currently, the act just says that the process will be based on the Public Service Act. If we don't want that, we'll either have to draw on something that exists or do the whole thing.

What do you suggest? What should we draw on? How do we do that, as a committee?

Ms. France Houle: Going for that model is indeed an option. But that also probably entails an entire restructuring of budgets, the way in which budgets are organized. I can't state a position on that, but that's definitely one way. What are the implications of that from a budgetary standpoint? I don't know.

Mr. Thierry St-Cyr: In addition, with regard to designated countries, I thought you were quite opposed to the principle. Earlier today, it was suggested that, by abandoning the designated countries concept, we would at least enable the Canada Border Services Agency to identify a number of cases that it considers dubious and that it asks the IRB to handle on a priority basis, more quickly. So we would nevertheless go through all the stages, we'd do them all, but perhaps without abiding by the principle of first-come, first-served. That would enable us to respond to all the potential problem situations in which a number of important cases that seemed to be problematic would be coming from a region.

Do you think that might be a path that would enable—

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

Ms. France Houle: No, because the IRB is an independent tribunal. So if we say another government agency... The Canada Border Services Agency is a government agency that is part of the central government. Telling the IRB how it should behave in specific cases doesn't work. Then the IRB would no longer be independent.

[*English*]

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

Ms. Chow.

Ms. Olivia Chow: I have a question for the Parkdale legal clinic. We've been talking about the importance of humanitarian and compassionate grounds. The proposal right now is to either go into the refugee stream, and if you do that, you will have no access to the humanitarian and compassionate grounds.... A lot of people, when they first arrive in the country, have no idea...let's say it's abuse, domestic violence, from Mexico, or whatever country. Can you perhaps describe why that element is not always clear cut and why there should really be humanitarian consideration, given that people still get deported even when the humanitarian considerations are being processed? It really has nothing to do with the whole backlog issue. But why is that important?

Ms. Geraldine Sadoway: Really, it's just because it's not a black and white issue if you're a refugee. The suggestion is that if you lose your refugee claim, then you're somehow a cheater, or you're lying, or you're bogus. That is not the case. In fact, a lot of people who lose refugee claims have very strong grounds. They have suffered a great deal and have a very strong humanitarian case. Maybe another board member would have found that with what you've suffered you should be accepted as a refugee, but this one board member said no, you don't meet that standard, that well-founded fear, but you do meet the standard we've had for a long time for humanitarian cases, which is that you would suffer disproportionate hardship, or maybe your child would suffer disproportionate hardship, if you were removed to the country where you came from.

By taking away the humanitarian application on grounds of hardship and disproportionate risk, and saying that if you make that refugee claim, you can't even file a humanitarian application for a year after if your case is refused, the minister is punishing people for making a refugee claim. He is saying, okay, you lost, you're not even going to be able to make a humanitarian case.

We've seen many cases that really do fall into the humanitarian category, even if they've been refused.

● (2100)

Ms. Olivia Chow: And you've been successful in arguing—

Ms. Geraldine Sadoway: Yes, 90% of the refused refugees that our clinic has dealt with over the past 13 years that I've been staff lawyer have been successful, and that's—

Ms. Olivia Chow: What kinds of cases are they?

Ms. Geraldine Sadoway: Well, there are not a lot of them—and that's actually another chart I'd like to hold up. We're not talking huge numbers here. If you look at the numbers of humanitarian cases —these are the last facts and figures. Do you see this little tiny green pie here, the smallest one?

Ms. Olivia Chow: You know what? We're not going to be able to see it. I only have a few minutes, so rather than showing me a chart that we can't see, could you...?

Ms. Geraldine Sadoway: Sure. It's in our written materials.

In 2008, 4.3% were accepted on humanitarian grounds in all of our big immigration programs. So it's a tiny number.

Ms. Olivia Chow: I only have a few minutes.

In the last minute or two, can you describe this? Right now there's a section—we heard it's section 96—that means that when you put in your case on humanitarian and compassionate grounds or considerations, you cannot describe the harm you have experienced. This is strange, because if it is, say, abuse or domestic violence, or the person is being tortured because of being in an arranged marriage, let's say, or whatever the reason, it could be humanitarian grounds and that person has suffered harm. Right now that section says you can't put that in as a consideration. I would imagine that's a problem.

Ms. Geraldine Sadoway: That's right.

Ms. Olivia Chow: In the 3% of cases in which you've been successful, can you just give us a concrete example of one case? Describe a story. Who are the ones we may end up excluding?

Ms. Geraldine Sadoway: Sure. I'll tell you one.

One case we had was of a Roma woman from Hungary, and the board found she was completely truthful. She'd had a terrible life experience of being beaten up repeatedly by skinheads. She'd gone to the police. She had never been protected, and eventually she came to Canada.

The board found that she was truthful, that she had had a terrible experience, that she shouldn't be going back to Hungary. One board member told her, “You have a very strong humanitarian case. I find that you're basically in fear of severe discrimination that is still continuing in your country, but I can't accept you as a refugee in danger of persecution.” Another board member might have made a different decision, but that board member said that discrimination in her case didn't reach the level of persecution, but it was a strong humanitarian case.

So that case came to us. She was a wonderful person in her community. She actually organized the Hungarian Roma in Toronto.

Ms. Olivia Chow: Was it agreed...?

Ms. Geraldine Sadoway: She was accepted on humanitarian grounds. She's now landed.

● (2105)

Ms. Olivia Chow: Thank you.

Mr. Greene, do you agree with what the Parkdale legal aid lawyer said?

Mr. Michael Greene: My concern about a humanitarian claim is that you often look at the totality of the circumstances. You look at the risk of hardship, which has now come to be the accepted definition of what a humanitarian claim is all about. It's what officers are mandated to consider. It's undue, undeserved, or disproportionate hardship if they are returned to their country of origin.

The officers also look at how well settled you are here, how close your family ties are, how well established you are, and whether you're doing good for the community, creating jobs, and that kind of thing. It's the whole big package.

To tell officers that they can't consider the hardship portion or the risk portion of the case is to tie one hand behind their backs or put blinders on. I think it would make it an unrealistic and arbitrary decision. I don't think it's necessary.

I sympathize with what the minister is trying to do. It's to stop you from having multiple kicks at the same can. You can lose your risk-based claim and then make it again and again in three different places. A lot of the time, it's a multifaceted claim, and I don't think we should restrict those.

Ms. Olivia Chow: That's right. It doesn't really shorten the timeline anyway.

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

Ms. Olivia Chow: Thank you.

The Vice-Chair (Hon. Maurizio Bevilacqua): We'll now move to Mr. Young.

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

Mr. Greene, I want to thank you for your comments on the time. We've heard from a number of presenters that the times are not workable. We're starting to get a good picture of that.

I wanted to ask you this. Given the implementation of the new Refugee Appeal Division and continued access to the Federal Court, do you think it is reasonable to limit access to additional avenues of recourse to allow for a brief window in which to remove a failed claimant?

Mr. Michael Greene: Well, as I said, I can see that if you have an effective second stage, the RAD, the Refugee Appeal Division, would address the concerns we have. It's why we have the PRRA in the first place. It's supposed to catch mistakes at the first level, and you have something to catch those.

I am opposed to taking away the humanitarian claim for the reasons that I think my friend has given. You have to remember the humanitarian claim does not delay removal. You can apply for a stay, but you're not necessarily going to get it, and the proportion of success is not actually that high.

I'm fine with restricting access to the PRRA, and I know a lot of my colleagues wouldn't be, but I think it's all right if you have the RAD. I would say you should leave the humanitarian claim alone. You should not restrict it.

Mr. Terence Young: Thank you.

Could you please comment on how the proposed measures improve the current asylum system?

Mr. Michael Greene: In the current system you have the one single determination. It's luck of the draw as to whether a board member is having a good day or a bad day. I wish they were all highly competent, but frankly, they're not.

After that, if you're unsuccessful, you can languish in the system for years before you finally get in. You know you're not going to be successful with most of those claims. A lot of these people know that, but they stretch it out. They can't visit their families. They're stuck in limbo. Sometimes it works out for them and sometimes it doesn't.

It's not a great system because it can act as a magnet for undeserving claims. There are problems with the way our system works right now.

Mr. Terence Young: Thank you.

Can you amplify your answer for me? How will these reforms deter outright abuse?

Mr. Michael Greene: Well, I want to go back to what I said earlier, because I don't want to put too much emphasis on it. The reforms will help if you have a properly resourced system to work with them, but it's the properly resourced system that has been the weakness of our process.

For good economic reasons, we've had cutbacks all around. The CBSA and CIC are forced to be spread too thin. I think if you have a commitment to keep the enforcement resources and the determination processes, it will work better.

As I said, I'm not opposed to mandated timeframes if they're reasonable. You don't have “reasonable” in the proposal. But if you could get that, it could then work more efficiently.

Mr. Terence Young: What about the safe country of origin policy? Would that help to deter abuse?

Mr. Michael Greene: In its present form, I can only say it's scary. I'm sorry.

We don't have any control over who gets listed and who doesn't, and we don't know if it's going to be a political process. It could be any government making these decisions. Who knows what we're going to have? I don't like that very much.

● (2110)

Mr. Terence Young: Have you got any suggestions on how to improve it?

Mr. Michael Greene: My suggestion is if you're going to have a safe country list, rather than using it to take away appeal rights from everybody who's a member of that country, you could say we're going to prioritize those claims and hear them first because suspicions are attached. Not everybody's going to like this one, but I think that's one way you could improve the consequences of being a listed country. But the way it's proposed right now, without safeguards on how a country gets listed, it's very problematic. It's not a safe proposal.

The Vice-Chair (Hon. Maurizio Bevilacqua): Does anyone else have a question?

Mrs. Wong.

Mrs. Alice Wong: As I mentioned in the previous panel, I understand that for the safe country of origin, in England, certain sectors, certain populations, are listed as refugees, and they are legitimate. For example, in the case of Ghana, women can claim as refugees whereas men cannot.

Do you think that might be able to solve some of the challenges?

Mr. Michael Greene: Who's that question directed to?

Mrs. Alice Wong: To you, please, Mr. Greene.

Mr. Michael Greene: Clearly, something like that is contemplated by the way the regulations are worded. The problem that exists here, and Ms. Houle talked about it, is that you've got a provision that would take away rights that is not controlled by legislation, but it's a cabinet process. That's the weakness.

I think if there were safeguards, if you had the right kinds of restrictions on how a country was listed or how these determinations were made, yes, it could, because you could have homosexual populations at risk in a country that's otherwise safe—those kinds of things.

It's something that has to be very carefully thought out. I don't think it should be left to regulation, frankly. I think the kinds of restrictions should be something your committee should be looking at. If you're going to have a safe country list, what kinds of restrictions can we put so that no political or arbitrary decisions are made in the case?

Mr. Rick Dykstra: I have one question for the Parkdale group. We've spent a lot of time talking this evening about the safe country of origin issue. I didn't clearly understand whether or not you think that a claim from a potential refugee would automatically be rejected the first time around if they were from a safe country of origin.

Ms. Geraldine Sadoway: A claim as a refugee or a claim on a humanitarian basis? On a humanitarian basis, supposedly there's not going to be a safe country that you can't make a humanitarian claim on. Humanitarian claims are based on all kinds of other issues that do not have anything to do with—

Mr. Rick Dykstra: I'm speaking specifically about the original application a refugee would make. Under the terms of the new legislation, do you think they would automatically be turned down if they were from a—

Ms. Geraldine Sadoway: If they made a refugee claim, they would be turned down, yes, if they were from a supposedly safe country, and they would not have access to the humanitarian procedure.

Mr. Rick Dykstra: Why would you say that? The whole idea behind it is that every person has the opportunity to make the claim, regardless of where they come from, initially, so they would be heard.

Ms. Geraldine Sadoway: That's the way it is now.

Mr. Rick Dykstra: I thought you stated a couple of pretty good examples of where there were exceptions to the rule, so I'm just trying to understand. You think there may be exceptions to the rule in some areas, but you're definitive that no one from a safe country of origin would be granted refugee status in their initial application?

Ms. Geraldine Sadoway: I would not say that at all. I don't know what the safe countries are going to be, for one thing. No one does. I know, for example, that if Mexico was put on the list, there would be many people who should be granted refugee status from that country because of the current human rights—

● (2115)

Mr. Rick Dykstra: Sorry, when you were conjecturing about your concern about safe countries of origin, what were you basing it on?

Ms. Geraldine Sadoway: I'm extremely concerned about safe countries of origin because we don't know who is going to be making that decision and what criteria they're going to make it on.

Mr. Rick Dykstra: So we need to define the criteria and define who should be—

Ms. Geraldine Sadoway: Not only that, it's totally contrary to the whole principle of the United Nations convention on the protection of refugees. It's supposed to be an individual determination based on the individual's experience. People from very developed countries have even had experiences that would fit the determination that they're a refugee. So it's just contrary to the whole principle.

Mr. Rick Dykstra: So you are acknowledging that it's possible, but you just don't think it's practical.

Ms. Geraldine Sadoway: I do not think it's practical. I don't think it's going to help or speed up the system because it's certainly going to be challenged. It really is going to politicize the refugee process to a terrible extent. I can't imagine why any government would want to get into making those kinds of decisions when we want to have good trade relations with China. Well, guess what? China—

Mr. Rick Dykstra: Okay, thanks. I understand. You don't agree with what we're doing here. Thank you.

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

On behalf of the committee, I would like to thank the witnesses. You have given us a lot to think about. There are obviously certain themes that are emerging from our hearings, and we will give them the attention they rightly deserve. Thank you so much.

This meeting is adjourned.

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