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Chair

Mr. David Tilson

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● (1810)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): We're going to start the first hour this evening. We have two witnesses before us.

Mr. Van Kessel, I'm going to read this, and it's going to take a long time to say all this. Gerry Van Kessel is the former director general, refugees branch, Department of Citizenship and Immigration, and former coordinator, intergovernmental consultations on asylum refugee and migration policy, Geneva. Welcome to the committee, sir.

The second witnesses are on video conference from Toronto. The Mennonite New Life Centre of Toronto representatives are Jordan Pachciarz Cohen, settlement worker, and Maria Eva Delgado Bahena, refugee. So there are two of you.

We will start off as I think I explained to you when we were off the record. Each of you will have up to seven minutes to make a presentation and then there will be questions from committee members.

Mr. Van Kessel, welcome to the committee. We thank you for coming, and you have up to seven minutes to make a presentation to us.

Mr. Gerry Van Kessel (Former Director General, Refugees Branch, Department of Citizenship and Immigration, Former Coordinator, Intergovernmental Consultations on Asylum, Refugees and Migration Policy, Geneva, As an Individual): Thank you, Mr. Chairman.

First of all, let me thank the standing committee for this opportunity to share some thoughts on refugee determination and the bill that is now before you. It is my hope that what I have to say will be of help to you.

When discussing immigration and refugees, we often hear about the need for balance. In the case of refugee determination, a balanced system is one that protects claimants who need refugee protection and denies the benefits associated with refugee claims to those who don't need protection. The challenge starts with the fact that claimants properly remain in the country until their claim is settled.

A fair refugee system is one that gives time to prepare and make the claim, time to decide the claim, and time to review the decision. This can be a most time-consuming process, an unintended consequence of which is its appeal to those looking not for refugee protection but to remain and work. By making claims and by using all review mechanisms available to them, they can stay for long periods before the refusal becomes final and removal can take place. Because a refugee claim and removal can take years, we then hear that it is inhumane to remove people who have been in Canada for many years and have settled in well, an argument not without merit.

That the refugee determination system has resulted in what are called "mixed flows" cannot be disputed. Refugee claimants first started to arrive in industrialized countries in large numbers in the middle to late 1980s. Now more than 10 million have arrived. The approval rate is in the area of 25%, compared to about 40% in Canada, but the "stay rate"—that is, claimants who for whatever reason end up staying—is around 90%. This is because most countries have even less success than Canada in removing unsuccessful refugee claimants.

These numbers tell us that, one, persons making refugee claims are more motivated by factors not mentioned in the convention refugee definition than by the need for refugee protection, and two, making refugee claims makes sense as the chances of being able to remain are good—if not permanently, then for lengthy periods—regardless of whether there is a need for refugee protection.

In this regard, a study by a University of London professor is illustrative. He interviewed refugee claimants who told him that a one-year stay made making a claim worthwhile. Making a claim is about choosing a better life for themselves and their families. That they do this should surprise no one, but it is not what governments, whether they are pro- or anti-immigration, intended when they signed the Geneva Convention.

For states, border control is an expression of sovereignty. International law makes this clear. In signing the Geneva Convention, states agreed to set aside issues of sovereignty in the case of refugees. The numbers indicate that they have also given up sovereignty over non-refugees who are in the refugee determination flows.

So when governments deal with refugee determination flows, they look for ways to respond to the non-refugee component, but unlike the case of illegal immigrants, they do so within a framework of their obligation to protect refugees. Governments have been doing this now for 25 years.

These changes vary greatly, from constitutional change in Germany, to visitor visas, to more resources, to procedures targeted at non-refugees, to far greater efforts at removing failed refugee claimants. Each change has resulted in criticism from NGOs and other advocates that refugee protection would be diminished as a result. It is my conclusion that without these changes the refugee system would have collapsed.

The fact that refugee determination systems remain intact, even if an ideal balance remains elusive, indicates that the balancing act has had success. One aspect demonstrating this is the increase in approval rates resulting from proportionately fewer non-refugees than refugees who are coming to our countries, as refugees continue to find that the effort of getting to our countries is worth the effort. And I readily acknowledge that it is an effort.

A sound determination system needs to function in an integrated manner. Resources, which are decision-makers and their support, procedures and volumes must be in balance. Decision-makers need to have the skill and knowledge to make good decisions and they need to be sufficient in number to keep the processing current. Procedures have to be fair so that decisions are sound. At the same time, they have to be efficient to discourage non-refugees. Finally, the volume of refugees must be what the resources can handle. Sudden and unexpected volumes of refugee claimants are more likely to end up being handled through special measures, such as temporary protection and amnesties, than by more decision-makers.

The measures aimed at volume are varied. The most obvious are the imposition of visas, more secure travel documents, interceptions, and safe-third-country and country-of-origin provisions. Procedures aimed at non-refugees are intended to make it unattractive for them to apply. A problem with resources, aside from cost, is that they almost always take a long time to put in place in response to sudden increases in the number of claimants. The result is of course longer processing times.

When I look at the changes the government is proposing, I see a balance. The system will be fairer as a result of the appeal on law and merit.

As an aside, it will be interesting to see what the impact of the appeal will be on processing times and on approval rates. It's worth pointing out that even without an appeal system at the present time, Canada has a considerably higher approval rate on average than all other countries that have an appeal system.

If it is introduced for persons from safe countries of origin, the status quo will really remain unchanged from what we have today. They will still be ineligible for the new appeal system, but they will continue to have access to the Federal Court.

The one-year limit makes sense because it denies the opportunity to prolong the process in cases where the issue has already been dealt with. More removals are essential because they confirm the message that this is the outcome of a negative decision.

In conclusion, I think the changes are well balanced, but as for any system of this type, it will not take much to upset the balance.

Thank you.

● (1815)

The Chair: Thank you, sir.

Thank you very much, Mr. Van Kessel, for your presentation.

It is now the turn of the Mennonite New Life Centre of Toronto. The two of you can speak either individually or together for up to seven minutes.

Thank you.

Mr. Jordan Pachciarz Cohen (Settlement Worker, Mennonite New Life Centre of Toronto): Thank you.

My name is Jordan Pachciarz Cohen and I am a settlement counsellor at the Mennonite New Life Centre. I'm also a law clerk. I work with a lawyer in Toronto preparing personal information forms for people's refugee claims.

First, thank you, Chairman. The Mennonite New Life Centre would like to thank the Standing Committee on Citizenship and Immigration for taking the time for community consultations on refugee reform. We trust that the following recommendations will help inform your decision-making and amendments to this important piece of legislation in order to ensure that protection continues to be the priority in a fair and efficient refugee determination system.

I think we all share a common concern to have a fast, efficient, and fair system. However, there are several concerns that we do have with Bill C-11, and because of our limited time, this restricts us to only speak to a few of them.

Our first concern is with the designation of “safe” countries and the lack of access to an appeal for the designated safe countries. We believe this threatens to politicize the refugee system and compromise the independence of the Immigration and Refugee Board. We believe that individual assessment on the merits of each case is required without government intervention and without influence from authorities making designation of safe countries based on any political system. Also, it's important to note that claims from countries that are commonly thought of as safe are those that would most require an appeal process. This is because there are complicated issues of fact and law, such as the availability of state protection in countries that are generally thought of as safe.

One of the other concerns is the access to humanitarian and compassionate applications, and people having only 12 months after a negative decision to present a humanitarian and compassionate application on these humanitarian considerations. First, I would like to mention that many claims are not refused because of lack of credibility or people who are trying to abuse the system, but very many claims are refused because of the narrow refugee definition and are refused based on state protection, access to state protection or internal flight alternatives. The actual immigration refugee division or the refugee division is making a determination that people do face risk but not actually persecution, so risk should be able to be assessed at the humanitarian and compassionate level.

I want to give you some examples of certain situations that may be encountered by people who wouldn't have access to H and C considerations but who should. One is if a family arrives in Canada and makes a refugee claim, there's one member of the family who has dual citizenship because he was born in a different country from the country of persecution, but has never actually lived in that country. Another is if the entire family arrives in Canada, makes a refugee claim, are accepted, but there's one family member who is over 21 who is not able to be included in the permanent residence application as a protected person, and this person has no other family in their country of dual citizenship; they have no connection to that country whatsoever, and they would be sent to a place where they have nobody and have no idea of what the situation is there and they would be separated from their family.

Another situation could be a person who has a child with a permanent resident or Canadian citizen, and if that person is deported from Canada there should be humanitarian concerns for the best interests of the child to have both parents remain in Canada to raise that child.

There are many other different circumstances that could arise; those are just two examples.

I'm going to move on to the timelines of Bill C-11 and the eight-day interview. We fear that an interview with a public servant after eight days of making a claim will lead to poor decisions. How can one expect to gather accurate information when questions asked are not in a calming and trusting environment?

● (1820)

Refugee claimants require good advice in order to present their claim, and they're unaware of the laws and procedures and what information is actually necessary to mention and what is important to their claim. Very often they're given advice prior to arriving in Canada by unscrupulous individuals, and without receiving legal advice, they may present information that is incorrect and inaccurate.

In my work in meeting with people to present their claims and to put their personal information form into narrative form, often claimants believe they cannot mention events that occurred if they don't have the physical evidence to back them up. So they leave that information out because they're unaware that their oral testimony is of evidence and that's why their credibility is being evaluated at their IRB hearing.

There's fear of public officials. Often the agents of persecution in their home country are public officials, and to present in an environment where there's a public servant who's interviewing them, there's no building of trust, no time, and not a safe environment in which to present their case. It's not enough time to get psychological reports in place and put together accurate information regarding their claim.

I think Maria Eva is an example of someone who I feel would probably have had a lot of difficulty being accepted as a refugee with the proposed Bill C-11, the current refugee reform, and would probably not have been accepted without being given the necessary time to prepare her case. I'm going to let her present briefly on her situation.

Ms. Maria Eva Delgado Bahena (Refugee, Mennonite New Life Centre of Toronto): Hello. My name is Maria Eva Delgado Bahena. I'm from Mexico. I was accepted as a refugee in Canada because I was beaten by an abusive partner who not only holds a government position but who was also extremely corrupt. I have gone to the authorities many times, and even to the state governor for help, but there was no protection for me.

We are totally thankful for the time to prepare my case properly. If I had to talk to a public servant, after eight days, to tell my story, it would have been impossible. I would have only explained part of my story. I would not have been able to talk about the intimate details, nor his involvement as a corrupt government official. I was even terrified to speak about other events at my hearing, and this was after getting a lot of support from psychologists, lawyers, and social workers. It was so traumatic, I could not imagine having to do that after eight days.

At my hearing, when they started to question me about why we had arrived in Canada, I didn't know how to tell about something so painful for me to someone who would judge me. I was ashamed of remembering too many things.

It took me many months to get all the documents and evidence I needed to prove my case. There were a lot of documents that I wanted to present, but the translation of them would have taken too much time that I did not have.

I know my country has been perceived as a safe place. My children and I are proof that the system in Mexico has deteriorated, because my constant complaints in order to get justice, including speaking to the government secretary and even the governor himself, were rejected because my aggressor is a person of public political profile.

Mexico is not a safe place. The authorities cannot provide its citizens protection. That is why I was accepted here.

Thank you.

● (1825)

The Chair: Thank you very much.

I'll start off with one question to you, Mr. Van Kessel. You look like you've been around this game. Can you tell us whether the system that's being proposed under Bill C-11, all or part of it, has been used in other jurisdictions, and if so, what are they—everything, any of the issues that have been raised? I'm sure you're aware of them.

Mr. Gerry Van Kessel: There are so many elements to any refugee determination system, and so many variations on each element, that the short answer is yes. When you take a look at what all countries do.... For example, safe countries of origin and the limitation on the right of appeal—that's the one I'm most familiar with right now—are used by a number of countries as they try to deal with the issue of people. I think it's really important to understand that we're talking about people who want a better life, who can't get it through the normal immigration stream but who see this as an opportunity. It's popular, because it gives them time to put down roots.

What countries have done in some cases is to send people home. Because of the safe-third-country provision, which some countries have, they do not have the right to what is called an asylum shop. You do not have the right to choose where you apply. If you are in a safe country, that's where you apply.

With a safe country of origin, it suggests that the likelihood of being a refugee is much less because you come from a country much like the country you happen to be in, and therefore a different kind of procedure is applied. It is very common to introduce express procedures that are based also on time limits for those people who are felt to be—I was with the department ten years ago—what we used to call manifestly unfounded claimants. We even tried a system called "credible basis" to try to have an express system for people who had no credible basis for their claim.

Yes, these various methods have been tried and are in place in many countries right now. That's the short answer to your question.

The Chair: Thank you.

Welcome back to the immigration committee, Ms. Mendes. You have the floor for seven minutes.

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Thank you very much, Mr. Tilson.

I'm glad to see you, Mr. Van Kessel. We've known each other for almost ten years, in our former lives.

I'm curious to find out, from your many years of experience and the many travels you had in your job, how is it that we can determine a safe country of origin? For example, in the case of this lady who presented her case from Mexico, how could we have this list and still be the welcoming country that we should be for cases like this lady's?

● (1830)

Mr. Gerry Van Kessel: I do not profess to be an expert on the new system. I know a fair bit about systems overall, but I have not spent time looking in detail at this. As I understand the safe country of origin proposal, it would still allow a full hearing, as for any other person. The only difference is the appeal. That is the only difference. Therefore, the situation for persons who come from safe countries of origin remains as it exists at the present time, because there is no appeal for anyone right now. So that is a trade-off. If you have confidence that your first level decision-making is good, if you have that confidence.... If I may say so, you can argue individual cases; you always can in this business. As a general rule, the very fact that we have the highest approval rate in the world suggests to me that by international standards we do. I think what's very important are the criteria that are used and adopted when it comes to—

Mrs. Alexandra Mendes: Determining safe countries.

Mr. Gerry Van Kessel: —determining safe countries of origin.

I'm familiar with the visa imposition, for example, on the Czech Republic and on Hungary, in my time as DG, and the difficult discussions we had internally—also with the minister at that time—around what were the balances we had to have. At that time it wasn't safe country of origin as much as a visa that would simply cut off people from arriving, because you would never give visas to people that you assumed wanted to stay permanently.

Mrs. Alexandra Mendes: But to go back to Mr. Cohen, if I may, what Mr. Van Kessel has just said is that Ms. Delgado Bahena would still have been able to apply under the new rules. Do you understand it that way?

Mr. Jordan Pachciarz Cohen: Yes, I do. However, the concern is not the safe country of origin, in Ms. Bahena's case; it's more the timeline and the eight-day interview process. She was explaining that she would not have been able to disclose certain information because of trauma and fear of speaking to a government official and feeling that there was a relationship with Canada and the U.S. in NAFTA. It wasn't confidential information. She was not sure whether that information would be shared with the government in Mexico or not.

Mrs. Alexandra Mendes: And access to documentation, I imagine.

Mr. Jordan Pachciarz Cohen: That's just one aspect.

Mrs. Alexandra Mendes: Okay.

Would you agree with that, Mr. Van Kessel?

Mr. Gerry Van Kessel: The information being shared with Mexico?

Mrs. Alexandra Mendes: No, no, the eight days, that it could be —

Mr. Gerry Van Kessel: Again, I don't understand the details of the system, and I don't pretend to, but it's one thing to make a claim in eight days, but the hearing is in forty days. I don't know what happens between the eight and the forty days, in terms of additional information that can be provided. I'm just not aware of that.

Where do you draw the line? I remember being involved in internal debates around timelines, and there's always an argument for extending. Where does one draw the line? You have to draw it somewhere and you have to be cognizant of the fact that there have to be limits. Otherwise, you defeat the purpose of the timeline itself.

Mrs. Alexandra Mendes: But we do understand, and that's my reading of the bill so far, that the eight-day provision is not actually part of the act, per se. It would be part of regulations, if I'm correct in assuming that. So I imagine that would be reasonably flexible. No?

You wanted to say something, Mr. Cohen?

Mr. Jordan Pachciarz Cohen: Yes, please.

I believe that the eight-day provision is in the act, but the sixty-day hearing is not in the act.

Mrs. Alexandra Mendes: It's the other way around. The sixty-day hearing, actually, I think is in the act. It's the eight days that isn't. Yes, the sixty days is in the act; it's the eight days that isn't in the act. It would be part of the regulations of implementation. So I imagine this is up for discussion; that is my understanding.

But it does seem like a very short period of time for someone to actually gather all the information and have this front-line person make a decision on how admissible her or his case is.

● (1835)

Mr. Gerry Van Kessel: What I'm not aware of is whether that eight days is when all the information must be gathered or whether that eight days is for the process of starting to gather the information. I recall how important it was to gather information as early as you could, particularly around identity, to deal with problems of identity. One of the huge problems we used to have was in fact not knowing who people were. The longer it took you to ask them, the more likely it was that you wouldn't get the answer you actually needed, to know who the people were. So that's one of the other aspects.

Mrs. Alexandra Mendes: The timeline?

Mr. Gerry Van Kessel: Yes, I think timing is critical. But if, for example, you have—and this is strictly my opinion, because I'm not a departmental witness—

Mrs. Alexandra Mendes: No, no, I understand that. I totally understand that, but—

The Chair: I'm afraid that's it.

Mrs. Alexandra Mendes: That's it? Thank you, Mr. Tilson. You have been kind.

The Chair: Madame Thi Lac, you're up.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good evening to you all. I would like to thank you for your presence and presentations.

In the past few weeks, a lot has been said and many witnesses have been heard as part of the current study on this bill. What we have gathered is that the timelines are now too long, compared with the bill's stated objectives. As well, we should never forget that since the Conservatives came to power in 2006, over one-third of the board member positions have been left vacant. That has led to a significant backlog. A lot has been made about the fact that people submit claims even though they are not genuine claimants.

Moreover, by delaying the introduction of legislation to monitor the work of consultants, the government has not helped those claimants who might have filed badly prepared claims because they did not have the information or advice needed to find their way through the system when submitting their claims.

What do you think of the fact that, within eight days, public servants are to provide claimants with advice on how to present their claims? Should the bill not be more specific, so that claimants be referred to legal counsel instead? We know that, in the first days after their arrival, claimants do not understand our system. It is a difficult process, and public servants should remain neutral. They are not necessarily the ones who will give them useful information to prepare their claims. Do you share that opinion?

[*English*]

Mr. Gerry Van Kessel: Merci.

I'm completely convinced that public servants are neutral when it comes to gathering information. Canada is a signatory to the Geneva Convention. That means we've accepted obligations not to refuse people who meet the definition of the convention. The job of a public servant in this regard is to gather information relevant to that decision. The public servant, in my experience, does not have any personal stake or personal opinion with respect to whether that should be a negative or a positive decision with respect to the information that is to be gathered. So I have no hesitation whatsoever in saying that public servants will gather the necessary information so that when it goes to the first-level decision-maker the information is there. And if the first-level decision-maker concludes that the information has been inappropriately collected or reflects a bias of any type, that will be cleared up very quickly.

I say that without any hesitation. Having had experience with adjudicators, having been with the department and so on, I can say they were truly independent beings. When an important decision was to come down and we, as senior executives, would meet, we'd be wondering what in the world would be coming down the line, because we had no idea. And we also knew that it was not our business to interfere.

I have no difficulty with that. And if there are public servants who do that, then the appropriate measures should be taken.

● (1840)

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac: My time is limited, and so I will ask you two or three questions back-to-back and then let you respond.

Since our goal is to improve the bill, in your view, which part of this legislation is most problematic? What should be improved?

We also heard about the risks of establishing source countries. It has often been said that claimants from source countries would not be able to file appeals. We also heard that the minister could not appeal a favourable decision in the case of a national from a source country. The minister is also being deprived of that right of appeal. I did want to hear you on that.

Would the accelerated processing not also lead to the dismissal of claims by public servants? Indeed, they would also be disadvantaged because they would not have had the information needed to answer all the questions concerning the information obtained during the first meeting with claimants.

Finally, there has been talk about a principle similar to that of the Chief Electoral Officer. With regard to the appointments, could we not recruit candidates from outside the public service, similar to what is done by the Chief Electoral Officer?

[*English*]

The Chair: The problem is you've asked four questions and given them a minute to answer.

However, you can answer any of those questions, Mr. Van Kessel.

Mr. Gerry Van Kessel: I'll be very quick.

The most problematic part of the bill, I think, are the assumptions made around timelines, and whether those can really be met, because immigration and refugees are not a static situation. If any of those elements change, then the assumptions change and the timelines change. That, to me, is the most vulnerable part of it.

What I'm saying on the question about safe country of origin is that if we can demonstrate that the status quo has a problem, then the new system will have a problem. But I'm not aware the status quo has a problem. Our approval rate is higher than that of any country, without an appeal.

The expedited process, reject claims for insufficient information.... There is an appeal to the Federal Court. If the Federal Court finds there has been insufficient information, or there's been something askew, something not done right, the Federal Court, in my experience, is not in the least hesitant to point this out in a very forthright manner.

Finally, with respect to appointments, it is my conviction that they are completely independent, based on my experience with adjudicators when they were in the department, not with the IRB. My experience with some of the members of the IRB was that because their appointment was up after a certain period of time, they got very concerned about how their decision-making was seen at the political level. So I think regardless of the system you have, there can be problems, but civil servants, because they have a lifetime guarantee, really can and will be independent.

The Chair: Thank you, sir.

Dr. Wong.

Mrs. Alice Wong (Richmond, CPC): I would like to share my time with Rick first, and then take my turn.

Mr. Rick Dykstra (St. Catharines, CPC): There is one thing that continually comes up at the beginning of our discussions when we are questioning our witnesses, and Ms. Mendes highlighted it very well. It's this whole issue around the eight-day process. This seems to have taken over the first part of every witness presentation. There is an interpretation by every witness who has come to present here that the eight-day process is going to lead to some form of outcome in terms of a decision.

We need to be clear that there are no fully set out regulations concerning what the eight-day process would look like. I'd like it if witnesses would actually give us some suggestions as to what they think should be in that eight-day process, or whether they think it should be a little longer. I know that most witnesses do; they can certainly put that on the table. But to suggest that the eight-day process is some sort of interview resulting in a decision is simply incorrect. For the record, I think we need to get that straightened out, and if it has to be done each time a panel comes to committee, I think it is critical and important.

Ms. Mendes asked about the eight-day process and then the sixty-day process that would follow. I want to quickly clear up that those are not actually in the legislation. Neither of them is in the legislation. They are going to be dealt with under the regulations that will be completed after the legislation is passed.

I will turn it back over to Ms. Wong.

But there definitely is a misinterpretation of what the initial process stands for. I think Mr. Van Kessel did a decent job of describing it. It's the ability to collect information as quickly as possible to the benefit of the applicant. It is not judicial. It is not quasi-judicial. It is not, in any form, some sort of legal representation or presentation that would be defined under legal structure. It is a process to assist, in every way that it can, the individual who is making the application.

● (1845)

Mr. Jordan Pachciarz Cohen: May I speak to that?

The Chair: Yes, you may. Go ahead, sir.

Mr. Jordan Pachciarz Cohen: I think I can answer both questions, from both members of the committee. My concern with the eight-day process is not that there is a law or that it's going to have an outcome; it's the fact that it's not going to provide accurate information, which could possibly lead to inaccurate credibility determinations at the actual hearing.

Refugee protection officers at the Immigration and Refugee Board are considered neutral, but in all my experiences of going to hearings, representing people, supporting people, the refugee protection officer who supports the IRB board member to make the decision and who asks all the questions is hardly neutral and is very harsh. In Maria Eva's hearing, the person was absolutely not neutral. She was extremely harsh with her around describing the sexual violence she suffered, and she made it very clear she did not believe a word Maria Eva was saying, even though she was providing very credible and consistent testimony.

The question is whether or not—

Mrs. Alice Wong: Mr. Chair, it's my turn now.

I understand what you said, but that is the present system. That is why you wanted to change it. Right now in the new system the IRB hires people as interviewing officers. They won't do the initial collecting of data. That will be impartial. Those people will be well trained so they are understanding. They know what the challenges are. They also have the flexibility to adjourn interviews to a later date in cases where there's evidence of trauma or vulnerability.

So in that case, why should we not have a reformed system that aims to have a decision on a claim as soon as possible in most cases? That's exactly what happens right now, and that's exactly why we need the reform. A chair of the IRB was here presenting to us how he's going to hire those people, how those interviewing officers are going to be impartial, and how he is willing to go beyond the normal government servants and maybe seek experts from outside. That is what the IRB has assured us.

Also regarding the designated safe country with regard to what Mr. Kessel has just said, in countries there are also allowances for special cases. For example, I keep mentioning the U.K. They counted Ghana, for example, as a safe destination country of origin. However, they know that the women there face some persecution of some kind. They allow the women to be considered specifically. So if we allow that, wouldn't that be an area where we can really speed up the process?

Mr. Kessel, that question is for you.

● (1850)

Mr. Gerry Van Kessel: The question of where you draw the line between efficiency and fairness is indeed very difficult. I think you'll agree that the devil is in the details. So it's the question of what the details tell you about how you deal with the exception. The problem in refugee determination so often is when the exception becomes the rule, it becomes the means whereby what I would call non-genuine claimants stay for a long period of time. So you have to have this balancing act.

Yes, it requires of the government a considerable amount of subtlety to try to identify those categories where you want to pay the attention, because I do not know of a government of the kind that worked in my organization in Geneva and so on that did not take its signatory obligations seriously. But at the same time, it took its obligations to protect its borders seriously. So this constant balancing took place. I think it can be done, but do I think it will end arguments about where that line is? No, and I don't think it should either.

The Chair: You're well over. I'm sorry, Mrs. Wong.

Mr. Bevilacqua.

The Honourable Maurizio Bevilacqua (Vaughan, Lib.): Thank you very much, Chair.

I want to thank the witnesses for their presentations. As we hear the many witnesses who appear in front of this committee, we're always learning as parliamentarians what the strengths and weaknesses are of this piece of legislation. Of course our ultimate objective is to improve it to essentially better serve refugees who come to our country for very obvious reasons.

We're all aware of the concerns about the timelines or some concerns about designation of safe countries of origin, the H and C bar, humanitarian and compassionate application. These are issues that have been discussed in detail, and they are quite repetitive in nature. The more we hear it, the more we've been able to inculcate it. Now it's time to begin to distill what it is we want to do with this.

But I have a broader question that I think sometimes is missed. Prior to the government's announcement, I personally asked the question of the Minister of Immigration in reference to the backlog that existed, in reference to the inefficiency of the refugee system, and in reference to all the things that I heard across the country vis-à-vis refugees and the system. I decided on that particular day that the status quo was simply not an option.

First of all, I want to hear from you. Is the status quo still an option for you? Secondly, as you're all aware, we are faced with a fairly large deficit, an increasing national debt, and at the same time we have an investment of approximately $540 million of new resources to be allocated in the reform package. Should that be left on the table or not, for those who advocate not investing or not moving ahead with this?

I'd like to know from all of you, where are you on this? Do you think we should work towards improving this bill? Should we be scrapping the bill? It's quite important for us to know that kind of thing.

Mr. Van Kessel.

● (1855)

Mr. Gerry Van Kessel: I'm in favour of improving our current situation. I think the current situation, for a number of reasons, is not one that should be sustained. When it takes so long for people who have refugee protection needs to find that out, that's a bad situation. When it takes so long for people who want to take advantage of the refugee system and they want to put down roots in this country—and I appreciate the positive decision they've made about this country—then it throws into disrepute a system that is intended to show the best of what Canada is. And I think that's really important. So the current system needs to be improved.

When you have the number of people that we have right now in our backlog, it's going to take money to correct that situation. There is just no other way around it. I remember going to Treasury Board once and trying to explain this kind of situation and telling them, pay me now or pay me later, but pay me you will, because this simply costs money. The only question is, how are we going to do it? I don't think the status quo is an option.

I think the spending of money, if it's done properly.... For example, if you combine really effective methods to stop people who just want a better life and who use the refugee determination system to get that, that money is effective. And if the numbers come down, the costs will come down. Sometimes it can be an upfront cost. Now, I don't want to raise hopes too much on that one, because the immigration world is one that confounds almost everyone continuously. So I think the money has to be spent.

If you start removing people in numbers, the message starts to get through that it's not worth it, that if you want to go somewhere and make some money to start building a better life, then don't do it here, do it elsewhere, try elsewhere.

Those are the kinds of things you have to keep in mind. The worst thing you can do—and this is the irony—the fairer you are, the greater is the exposure that you have to people who just want that better life. That's where you have to make some really tough decisions.

So I say no to the status quo. In the short run it's not an option. We need changes.

As for how well the current system will work, I haven't studied it in sufficient detail to give as thoughtful an answer as you might like. But in this business I hesitate to be too positive, because the demand by people for a better life almost always overcomes the efforts of government to manage it.

The Chair: Thank you, sir.

That concludes our time with the witnesses.

Hon. Maurizio Bevilacqua: Maybe he could have a couple of minutes?

The Chair: Did you have something to say, Mr. Cohen?

Mr. Jordan Pachciarz Cohen: Can I answer his question?

● (1900)

The Chair: Very briefly, because we're out of time.

Mr. Jordan Pachciarz Cohen: Sure, absolutely.

I am in agreement that we need to improve the bill. There are a lot of positive aspects in the bill, and I think we share a common concern in creating a faster system. Many refugee claimants don't want to be waiting months, a year, a year and a half, or two years to get an answer. Creating a faster system benefits everybody.

But there is such a thing as too fast, and it could lead to more costs, because if you're not creating a high first-level decision-making system then a lot more decisions are going to be overturned on appeal or go to appeal, and it's going to make it more costly. Also at the same level, if you're setting dates for refugee hearings too early and evidence isn't gathered in time and you have to wait for more evidence, you're wasting the time of the IRB.

I feel that the system being proposed is going to be more costly if you just schedule hearing dates that are inevitably going to be postponed because there is not enough time to translate documents, gather documents from overseas, and prepare the case properly. Enough money has to go into the system in order to speed it up with—

The Chair: Thank you, sir.

We now are out of time. We have another group of witnesses to come on after you.

I want to thank the two of you and Mr. Van Kessel for coming here today and giving us your thoughts on this bill. Thank you very much.

Mr. Jordan Pachciarz Cohen: Thank you, Chairman.

Thank you to the committee.

The Chair: This meeting will be suspended for a couple of minutes.

Again, thanks to both of you.

• _____ (Pause) _____

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The Chair: We're going to start again, ladies and gentlemen.

We have with us the Office of the United Nations High Commissioner for Refugees and Mr. Abraham Abraham, its representative in Canada. We also have with us Mr. Michael Casasola, a resettlement officer. One other gentleman will be here soon.

You can make a few comments, sir, about your thoughts on Bill C-11. We'd appreciate hearing them.

Mr. Abraham.

Mr. Abraham Abraham (Representative in Canada, Office of the United Nations High Commissioner for Refugees): Thank you, sir.

I'll go straight into my presentation, which I'd like to give in the interests of time.

Chairman Tilson, honourable committee members, ladies and gentlemen, the UNHCR appreciates the opportunity to provide comments relating to Bill C-11.

The Canadian refugee status determination procedure is one of the very few that the UNHCR holds up as an example to other countries. The necessity to provide fair and efficient refugee status determination procedures for refugee claimants stems from the right to seek and enjoy asylum as guaranteed under article 14 of the Universal Declaration of Human Rights, the responsibilities derived from the 1951 United Nations Convention relating to the Status of Refugees and its 1967 protocol, from international and regional human rights instruments, as well as relevant executive committee conclusions.

As underscored by the UN General Assembly and the UNHCR's executive committee, in which Canada plays a significant role, physical access of asylum seekers to the territory of the state where they are seeking admission as refugees and access to procedures where the validity of their refugee claims can be assessed are essential pre-conditions of international refugee protection.

I would like to briefly review the various proposed changes to the Immigration and Refugee Protection Act.

Regarding time limits, the bill provides for expedited timeframes, including the referral of a refugee claimant to an interview with an Immigration and Refugee Board official. While not specified in the bill, we are informed that the planned change is intended to include a data-gathering period of eight days, which replaces the personal information form process, schedule a hearing date, and complete first instance refugee status determination before a civil servant within 60 days.

The UNHCR advocates for fair and efficient refugee status determination procedures, including timely processing of asylum claims. Rapid processing should not, however, compromise fairness. It is important that a substantive written report be made of every personal interview, containing essential information regarding the application as presented by the asylum seeker. Based on the best state practice, the asylum seeker should have access to the report and whose approval is sought regarding the contents. Procedural guarantees for applicants, including access to information about the procedure and the assistance of interpreters, should be a right. Time limits should not unduly impact on asylum seekers' right to counsel and ability to collect and review information prior to hearings. Excessively short and tight deadlines can impinge on fairness. Best state practice ensures that the reasons for not granting refugee status are in fact and in law stated in the decision. This should be shared with the applicant to allow time to decide whether to appeal, including time to prepare and lodge an appeal.

In the UNHCR's view, it is important that decisions are properly substantiated so that the applicant can appeal meaningfully from a negative decision.

Regarding the use of Governor-in-Council appointees in first instance decision-making, refugee status determination undertaken by independent decision-makers is fundamental to the fair assessment of asylum claims. This should be carried out by staff with specialized skills and knowledge of refugee and asylum matters, who are familiar with the use of interpreters and appropriate cross-cultural interviewing techniques. Wherever possible this should be undertaken by a single central authority. The central refugee authority should also include decision-makers with training in the treatment of applications by individuals with differentiated needs, including women, children, applicants who are victims of sexual abuse, torture, or other traumatizing events, or individuals with mental or physical impairments that may negatively impact their ability to articulate a claim for asylum.

● (1905)

Regarding the implementation of the refugee appeal division, the UNHCR warmly welcomes the implementation of the refugee appeal division. In most countries that institute individualized refugee status determination procedures, claimants have the right to an appeal before an independent and impartial tribunal or body. This supports the right to an effective remedy in law. Such an appeal instance should have the jurisdiction to review questions both of fact and of law.

UNHCR recommends that the refugee appeal division should be available to all claimants, including those from "designated" or "safe" countries of origin. Instituting such an appeal mechanism will enhance Canada as a model. At the core of the refugee convention lies the principle of non-refoulement, whereby those with protection needs cannot be returned to a place where they will be at risk of human rights violations, persecution, or even loss of lives. The purpose of an appeals mechanism is to ensure that errors of fact or law in the first-instance decision-making can be corrected.

With regard to designated countries, the so-called "safe country of origin" list, UNHCR does not oppose the introduction of a "designated" or "safe country of origin" list as long as this is used as a procedural tool to prioritize or accelerate examination of applications in carefully circumscribed situations, and not as an absolute bar.

The safe country of origin concept is a presumption that certain countries can be designated as generally safe for their nationals insofar as it can be shown that there is generally and consistently no persecution, no torture, no inhuman or degrading treatment or punishment, and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In such situations, it is critical that each application involves a personal interview and is examined fully and individually on its merits in accordance with certain procedural safeguards; each applicant is given an effective opportunity to rebut the presumption of safety of the country of origin in his or her individual circumstances; and the burden of proof on the applicant is not increased, and applicants have the right to an effective remedy in case of a negative decision.

If the safe country of origin concept is employed, there must be clear and objective benchmarks for the assessment of general safety and mechanisms, including review of changes, both gradual and sudden, in any given country.

Separated and unaccompanied children require special procedural safeguards, including the application of the principle of "the best interests of the child", in accordance with the 1989 Convention on the Rights of the Child.

It may be that despite general conditions of safety, for some groups or relating to some forms of persecution, the country may remain unsafe. It is UNHCR's view that legislation should assure greater access to assessment mechanisms for those with heightened risk profiles.

A country cannot be considered safe if it is so only for part of its geographic territory. UNHCR emphasizes that the designation of a safe part of a country does not necessarily represent a relevant or reasonable internal flight alternative.

With regard to removal and to the one-year bar on access to PRRA and humanitarian and compassionate review subsequent to a negative final determination by the IRB, UNHCR guidance is that an asylum seeker should have access to a first instance decision, followed by an appeal in case of a negative decision. As good practice, there should be a mechanism for addressing protection gaps that may arise subsequent to IRB decision-making whereby individuals in need of and deserving of recognition as refugees, who are nonetheless not recognized through regular processing, can be protected.

UNHCR also notes that effective return policies and practices are essential to maintain the integrity of the refugee status determination procedures and asylum space and that it is appropriate for states to remove persons not to be in need of protection where they have had access to full and fair procedures.

With regard to assisted voluntary return, UNHCR supports the proposed assisted voluntary return program. UNHCR considers that sensitive counselling at all stages of the asylum process is necessary, including for those subject to removal procedures.

● (1910)

Chairman Tilson, honourable committee members, ladies and gentlemen, I thank you.

● (1915)

The Chair: Thank you, sir. You were ten minutes, right on the button. It was well timed. We appreciate your contribution this evening.

Mr. Bevilacqua has some questions for you.

Hon. Maurizio Bevilacqua: Thank you very much.

I think there are common themes being expressed throughout our hearings. We obviously benefit from them, because they allow committee members to focus on some of the flaws or some of the concerns that exist.

This is a question that I asked individual witnesses who appeared prior to this panel. It speaks to whether this bill has the foundation to move forward. By that, I mean do we have what it takes or at least the framework to improve on the present system?

Secondly, during a time of fiscal restraint—I hoped there would actually be more, but there isn't more, because we seem to be going into a deficit that will have repercussions in the future—is it important for those of us who believe in improving the status quo, as it relates to the refugee determination system and the form, to understand the importance and perhaps gain a greater appreciation of what half a billion dollars in investment in this area would mean during these periods?

Mr. Abraham Abraham: Thank you, sir, for that question.

We have had and continue to have discussions with the Minister of Citizenship and Immigration, where we have very openly discussed the problems and issues that we confront today. There's no doubt that Canada faces enormous challenges with regard to its refugee status determination system. We understand there is a need to change certain things.

As far as UNHCR is concerned, we are basically here to support and advise the Government of Canada in a supervisory role to ensure that refugees are protected. Clearly, whenever an attempt is made, as we see now, an attempt to try to improve or change the areas that require improvement, we support it. We feel there is definitely room to improve the system. On our side, we are willing to provide whatever support possible, no matter what the constraints are.

At the end of the day, we must remember that we are dealing with human lives and people who are fleeing persecution. We also clearly understand there may be people who take advantage of the system as well.

UNHCR has always advocated for a very strong front-end procedure and a very strong end procedure, which is basically the removal of people. I don't think these two areas—a front-end procedure that is robust and strong and an end procedure that literally removes people who are not in need of protection—need to be addressed. To that extent, the bill provides elements to that effect, and we hope this can go forward.

Hon. Maurizio Bevilacqua: There's a lot of discussion about designation of country of origin. Some people refer to a “safe country”, and some people wrongly refer to a “third country of origin”. The point I'm making here is that as a concept, you don't have a problem with the designation of country of origin.

Mr. Abraham Abraham: This is not new at all. Several countries have designated lists. We also have to remember that a designated list does not remain static. There are changes that take place.

There have to be the types of mechanisms and safeguards that are necessary to ensure that nothing has changed in the country between the time the determination takes place and the time the person is removed. There has to be a mechanism in place to track these things. It cannot be an absolute decision where you have *x* number of countries and anyone from those countries will be dealt with differently.

● (1920)

Hon. Maurizio Bevilacqua: Can I give you a hypothetical situation? Let us say that we were to create an advisory panel to the minister and this advisory panel would request your participation in it. You're a respected organization. You know that; I don't think I need to tell you that. Your input is extremely important, and you would be a very important member of that advisory panel that would recommend to the minister which countries should be in, which countries should be out, whatever the case, however it's structured. This is just hypothetically speaking.

What would you say to that? Would you participate?

Mr. Abraham Abraham: I don't see any difficulty in UNHCR's participating in such an advisory panel, but I would like to make sure that everyone understands that UNHCR is not here to be part of creating that list. Because we, as a United Nations organization, and more as a humanitarian organization, cannot be seen as taking sides with one country or another. So if we are on a panel, we will be providing an objective and constructive analysis of the situation in that particular country we are talking about for the Government of Canada to take the decision whether to include or not to include a country.

The Chair: Thank you.

Your time is up, Mr. Bevilacqua. Sorry.

Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): I would like to thank you for appearing before us.

You do a lot of work with refugees, naturally, that is your job. Our committee has heard a number of people talk about the whole issue of initial timeframes. For example, we have heard about the proposed eight-day period for the interview. The government claims that a legitimate person, i.e., an actual victim of persecution, could tell his or her story rather quickly, within eight days. The government does not want to give people too much time to make up a story. Conversely, other groups have told us that, in many cases, the people who have been the most persecuted, who are more traumatized, are the least able, psychologically speaking, to tell their stories within an eight-day period.

You yourselves work with refugees. Do you believe that conducting interviews as quickly as possible is the best way to get to the truth? Are you not concerned that, on the contrary, the people who are the most traumatized are placed at a disadvantage with such a speedy process?

Mr. Abraham Abraham: Please allow me to answer in English. It will be easier for me to answer those technical questions.

[*English*]

We are very much aware of the importance of time limitations, and you obviously cannot have an open-ended time for assessing a claim and coming up with a final decision. But at the same time, we would like to caution against the danger of reducing the time, which might compromise the quality of the decision. We would like to make sure that all the aspects and all the corroboration of information and data and all of that is well carried out and analyzed, so that we have all the elements necessary to deal with a decision that would end up being correct, as opposed to the dangers associated with a wrong decision, which could even lead to a person's being returned and therefore having other difficulties.

[*Translation*]

Mr. Thierry St-Cyr: I understand the general principle, but I would like to know more about your real life experience with refugees.

Would it not be possible, or even likely, that people who have lived through extremely traumatic experiences, such as their families being massacred or themselves being raped, need one, two, three or even four weeks before agreeing to tell their stories, even to people they feel they can trust, like yourselves?

● (1925)

Mr. Abraham Abraham: Allow me, Mr. Chair, to ask my colleague to provide you with a more adequate response.

[*English*]

The Chair: Gentlemen, I never introduced Mr. Hy Shelow, who is the senior protection officer.

Proceed, sir.

Mr. Hy Shelow (Senior Protection Officer, Office of the United Nations High Commissioner for Refugees): Thank you, Mr. Chairman.

Thank you, members.

It is very difficult to answer a question like that until we understand more clearly what would be entailed in the collection of information during those eight days. The UNHCR conducts refugee status determination in 50 countries worldwide annually with hundreds of thousands and sometimes millions of people.

[*Translation*]

Mr. Thierry St-Cyr: Allow me to interject. If I understand correctly, you do not know exactly what the content of that meeting will be. Let us put that meeting aside.

When you meet with your refugees, could it be that people who have experienced traumatic events need more than a week, perhaps two or three, before they even agree to tell you their stories?

[*English*]

Mr. Hy Shelow: Undoubtedly.

Undoubtedly, some people who have been traumatized are never able to articulate effectively, either because of mental health problems or because the traumatic experience was so difficult they don't want to talk to people about it. A classic example would be the rape victim who is very uncomfortable about talking to an individual about these issues.

If the eight days initially is simply a matter of collecting biographical data—a person's name, where they come from, etc.—that is much different from the eight days including a substantive questioning series about matters that would go to the substance of a claim.

[*Translation*]

Mr. Thierry St-Cyr: In your presentation, you said that asylum seekers should have access to their reports, to the information that was gathered during their interviews. I imagine that is because you assume that, in those difficult times, following a traumatic event, people might have a hard time expressing themselves, making themselves understood and ensuring that their stories are properly reported. Was that the objective of that request?

[*English*]

Mr. Abraham Abraham: This is quite possible. This is why it's important that we gather and collect the information in all its detail, so that we are sure of the decision we would have to be making.

[*Translation*]

Mr. Thierry St-Cyr: Generally speaking, the issue of designated countries is one of particular concern. In your view, does the fact that files are no longer processed on an individual basis, but rather collectively, by country, pose a problem? It appears that you seem to be ready to live with that. All the same, what do you think about the committee trying to come up with a mechanism that would help establish priorities, for reasons of system effectiveness, based on a personal assessment of fraud risk or ill-intentioned use of the system? Would that not be preferable to a filter that only takes into consideration the country of origin?

[*English*]

Mr. Abraham Abraham: Mr. Chairman, as I said earlier, it should not be an absolute bar, and it should not be used as a tool in order to eliminate. It should be used more in order to expedite, perhaps, the processing of a first instance claim, because the person is deemed to be from a democratic or free country where there would not necessarily be any particular reason, as a safe country, to have any claims that could support such an effective claim.

I think this is why you need to look at the individual person's case. I have provided three scenarios. It's like a checklist that you need to carry out a personal interview. You need to find out all of the aspects related to that person's individual situation and consider it—and not as a country. I mean, we have so many democratic countries in the world. I remember that when my High Commissioner came to Ottawa recently this was a question asked of him. He gave a very simple reason. He gave a very simple example.

He said to take Mali as an example. It is a democratic country, but a country where you have female genital mutilation that is practised fairly widely. Now, if you have a woman who comes here from Mali, you will not be in a position to easily say, “Look, you're from Mali, there should be no reason for you to claim persecution, so I'm sorry, that's it”.

That's why I talked about the sensitivities of these cases, where an individual person may have, by his or her own right, a reason to claim persecution and who would be expressing fear about being returned.

The other thing is that being returned from a safe country is also not a very easy thing. You go back, and where the decision was wrong in the first place, the person could be found to be in a much more difficult position and could already be what one would refer to as a *réfugié sur place*.

● (1930)

The Chair: Thank you, sir.

Ms. Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): On the same note, every refugee should have the same right to an appeal. Under this law that we are debating now, refugees from certain "safe" countries will not have that right to an appeal. Do you support treating refugees from one type of country differently than another country, or do you believe that every refugee should have the same treatment, no matter where they come from? I'm not talking about expediting—expediting is the positive side; this one is the negative side. If you are from a safe country, you get no appeal.

Do you support that or not? Yes or no, because I'm not clear as to whether you support this element or not. You're saying safe countries is possible, but I'm also hearing that you want every refugee's claim to be determined individually. If that's the case, if you're from a safe country, you would not get an appeal.

Mr. Abraham Abraham: I'll answer the question, and then I will also defer part of it to my colleague, who might wish to add to it.

There is no way in which you can treat one refugee different from another. It is not possible. You cannot have a discriminatory policy for determining refugee status, because as I said earlier, refugee status determination comes from the right of an individual to be able to seek asylum. And therefore he or she has to be dealt with on that individual basis to find out what precisely is the claim the person is making. There cannot be two different systems. But as I said, a safe country for us would be a country where procedurally you may want to be expediting, but there have to be the checks and balances I referred to in my statement that have to be put into effect so that at the end of the day you are actually treating everyone alike.

Ms. Olivia Chow: So just let me be clear—

The Chair: I think Mr. Abraham wanted Mr. Shelow to elaborate.

Ms. Olivia Chow: Can I just be clear on this one? Then what you're saying is that it's okay if people are from Congo, for example, where there is a big civil war going on and it's obviously not safe. Therefore those cases from Congo should be expedited. But the reverse is not necessarily true. If you're a gay man from Ghana, for example, or Iran, where that's punishable by death, if you're from those countries, even though it's democratic, it's not necessarily safe and therefore you should not have your right for an appeal denied.

Am I clear?

Mr. Abraham Abraham: I think you're quite clear, but I think I'll let my colleague here answer that.

Mr. Hy Shelow: I think UNHCR has been quite clear that we believe that all refugees should have access to an appeal on the merits, both as to law and fact. That basically stems from Canada's convention obligations, which include reference to the non-discrimination clauses in the 1951 convention relating to the status of refugees, both article 3 and article 8, but particularly article 3. Very briefly, since it's a brief article, I'll read it to you: "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin".

● (1935)

Ms. Olivia Chow: Thank you. That actually is extremely clear.

In your response to my Liberal friends, in that discussion, I heard that it's fine to have safe countries, but under the safe countries in this law, you will not have a right to appeal, which then, Mr. Shelow, is really in contravention of the article you've just read out. I thank you for that clarification, because I'm now understanding it.

Mr. Hy Shelow: I believe that in your national legislation you're trying to link two ideas that are not necessarily linked in the convention. We do support the efficacy of procedures. We do support the use of, for instance, safe country lists—or we don't contradict it. Many states have decided to create these lists, but they're used as a procedural tool to address a large group of people who have similar backgrounds, coming from places that are generally safe. It allows the decision-maker, or the assessor, to ask a much simpler line of questions, such as "why are you different from the vast majority of other people who come from your country of origin?", as opposed to having to get into great detail in terms of background information and background questioning.

Ms. Olivia Chow: But they shouldn't be denied the right to an appeal, even if they're from one of the safe countries.

Mr. Hy Shelow: No, madam. I think we've been quite clear on that.

Ms. Olivia Chow: Thank you very much.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Thank you to all three of you for being here this evening.

I have about six or seven questions, so I'm going to jump right in.

To follow up on that, does the agency consider that the reforms proposed in the bill are in line with Canada's international obligations for refugees?

Mr. Abraham Abraham: My response is that there is nothing in the bill that is contrary to Canada's international obligations.

Mr. Rick Dykstra: Thank you.

I just want to be clear when it comes to the issue of the safe country of origin concept. When this is used to fast-track certain claims, as long as—I think I pointed this out—the designation process is rigorous and transparent, your agency does not oppose the safe country of origin concept.

Mr. Abraham Abraham: No, we do not oppose the concept of safe country of origin. As I said in my statement, there are countries that have developed lists of safe countries of origin.

Mr. Rick Dykstra: To follow up on that, has the UNHCR had a role in the designation processes in any of those countries? If the answer is yes, what would that role be?

Mr. Abraham Abraham: I know the answer, but I will defer to my colleague here.

Mr. Rick Dykstra: That's not a problem, Mr. Abraham.

Mr. Hy Shelow: The answer is yes, we are engaged. It's more a question of how we're engaged. To use an example, in the Canadian context, with regard to your temporary suspension of removals list, every time a country comes up for renewal in your examination of whether it should be retained on the temporary suspension of removals list, UNHCR is asked to provide comments regarding objective criteria relating to the list, relating to country conditions.

I suspect it might be something different from what you're suggesting, which would be that UNHCR sit on some sort of panel. As Mr. Abraham indicated earlier, we would generally prefer not to do that.

Mr. Rick Dykstra: One of the issues that have arisen for us, which we are trying to figure out how to address, is the whole concept of opening up the IRB appointments process, so that we would actually have the refugee protection division filled with public service decision-makers, instead of using the current appointment process that we have. Does that raise any concerns from your perspective, from an international asylum perspective?

Mr. Abraham Abraham: There are many countries in the world where the first-instance decision is undertaken by civil servants. For us, what is important is that the decision-making body is independent and is not put under any kind of pressure, or brought under any kind of influence, but is able to make decisions based on objective criteria. That's what's important to us—not whether there's anything wrong with them being civil servants or not. We like the independence that should be exercised by the determining body.

● (1940)

Mr. Rick Dykstra: There certainly have been concerns raised over the designation of safe countries of origin where there are certain vulnerable populations. I appreciate how direct and open you've been on this. Do you think this concern is answered by the proposal in Bill C-11 that allows the minister to make designations specific to a population within a country so that they can be exempt from the designation? You gave a very good example of something for which we would certainly hope to seek exemption, in terms of a specific population in a country.

Mr. Abraham Abraham: You're referring to part of a country. There is a presumption here that there is an internal flight alternative, which may not necessarily be the case. Again, we come back to the main issue: Are we dealing with the protection of the individual or are we dealing with a system that differentiates one or a group of people from another?

Mr. Rick Dykstra: I think what's important on this aspect is that you can come at it from two different perspectives. Some folks who have witnessed have chosen to come at it from the perspective that there's a perception there's going to be a blanket safe country of origin. Therefore an individual, regardless of his individual background or what may have happened to this person.... There is some sort of understanding that that's how this legislation would be enacted with respect to safe country.

The other way to come at this—and I think this is what you three are suggesting and what the government supports—is yes, safe countries of origin, with rigorous assessment tools and criteria to be able to define them, but having a subset that actually allows for parts of a country, or individuals, or groups within that country, to be exempt, so to speak, from that country of safe origin. Your example in Mali would to me be an obvious recommendation or suggestion that we would move into this.

What I'm trying to do is open up the understanding of exactly what safe country of origin is going to mean here. I would ask that you give your perspective on how, from a regulatory perspective, this would be enacted.

Mr. Abraham Abraham: If I could ask my colleague to answer that, I will step in later. Thank you.

Mr. Hy Shelow: I'd be happy to answer that question.

I think we're talking, to a certain extent, to cross-purposes. You're currently talking about classes of people and a positive bias in favour of human rights protections for certain groups of people. Our concern is more on geographic territory, taking a part of a country and suggesting that part of that country would be safe. For us that would be problematic because it would require the individual to move within a country that nonetheless may or not be able to provide them with state-based protection.

Mr. Rick Dykstra: One of the other components of this is the issue—and it's been stated—that there's a separation between the additional 2,500 refugees we would like to add to our numbers. In fact, part of moving forward on this is to get at those additional 2,500 refugees per year. I'd like to get your comments on that, because there's a perception on the one hand that yes, it's a very good thing to do, but you seem to be tying it to the bill, so why not do it anyway?

Is this really a wrong time to introduce a change that would actually see an additional 2,500 refugees come to this country each and every year?

● (1945)

Mr. Abraham Abraham: Let me say that resettlement is not an obligation. There's no obligation on the part of any country to actually resettle people; it is an act of goodwill. We must remember that today, when we are talking about over 36 million refugees and persons of concern worldwide, where we have carried out reviews of the people who are in need of resettlement we have found that there are some 700,000 people who need to be resettled immediately.

The Chair: Thank you, sir.

Mr. Bevilacqua and Ms. Mendes.

Hon. Maurizio Bevilacqua: Actually, Mr. Chairman, I will give my entire time to Ms. Mendes.

The Chair: You're so kind, Mr. Bevilacqua.

Ms. Mendes.

Mrs. Alexandra Mendes: Thank you very much, Mr. Chair.

First, thank you very much for your testimony. I would like to pick up on the last comment you made, about resettlement not being an obligation. I would presume to extend that statement to refugee protection is an obligation for countries that have signed the Geneva Convention. Is that the logical reasoning of what you were stating?

Mr. Abraham Abraham: Resettlement, as far as we try to take it forward, is where we think that resettlement has to be used as a tool for protection and where we think that resettlement is the only solution that could be applied in the case of a particular individual.

Mrs. Alexandra Mendes: I'll go back to my years as a worker in a settlement agency for immigrants and refugees. The big difference between settling refugees who had already been chosen by the Canadian government abroad, and very specifically, the Afghan refugees—or the Kosovo refugees when we had the Kosovo crisis in 1990—is that when those persons arrived in Canada, or very specifically in Quebec, these government agreements were already in place. The programs were there, the whole system was there to sustain and support this resettlement. When we're dealing with refugee claimants, we don't have that, but we do have the statutory obligation to hear these people and to help them.

I think one of the big fears Canadians have is with regard to the economic refugees, the ones who seem to be coming to our borders as a way to find a better life for themselves and their families, but also to avoid the regular immigration system by applying and waiting the five, seven, or ten years, or whatever time it takes to go through the whole immigration system.

How do you propose that a country like Canada, which has very generous and welcoming settlement policies, would address that fear?

Mr. Abraham Abraham: I will say very quickly that we do not talk about economic refugees and we do not talk about climate refugees because the term "refugee", by definition, is contained in the 1951 convention and means people are fleeing persecution in fear of their lives.

Having said that, let me defer this particular question on resettlement to my resettlement expert, Michael Casasola.

Mr. Michael Casasola (Resettlement Officer, Office of the United Nations High Commissioner for Refugees): The only thing I could add to what Abraham was building up to in the previous question is how critical we are in terms of the resettlement need. While it is not an international obligation, it is generosity on the part of the states. We're at a position right now where we're only able to find solutions for about one in ten of those 700,000 Abraham referred to earlier. So there's this tremendous gap.

We've been fortunate that Canada's been one of the most generous resettlement countries. It's one of the big three, along with the United States and Australia. In many ways, it's been a leader internationally in developing a lot of initiatives. You gave the example of the Kosovars and the Afghan movements. Canada has a very non-discriminatory approach, so UNHCR works with Canada around the world.

When we talk about the obligation, UNHCR deeply values the contribution Canada makes on resettlement and continues to count on Canada to play such a leadership role internationally as we try to expand the availability of resettlement.

Mrs. Alexandra Mendes: But again, that doesn't address the fact that.... When I'm speaking about economic refugees, it's not my definition; it's how Canadians perceive it. That's what I would like to ask for help in, because we do have to face the fact that our fellow citizens have this fear that a lot of people who claim to be refugees are using the system to contravene normal immigration processes.

The determination of a refugee as someone fleeing their country for fear of persecution is a very difficult thing to prove. If you're fleeing Mexico, for example, which is supposed to be a democracy, how do you prove that to a Canadian who goes to Mexico on vacation?

● (1950)

Mr. Hy Shelow: I think that part of the answer to your question is contained in the question itself. There is certainly an issue with regard to migration to Canada. Perhaps some of the systems that Canada has produced relating to those issues would help to address some of the concerns of the Canadian public. Certainly when you talk about these issues, the way we would discuss them is in terms of asylum space or preserving asylum space. We understand that legislators—

Mrs. Alexandra Mendes: But I'm not discounting the fact that someone fleeing Mexico may have very legitimate reasons for fleeing Mexico. That's what I'm trying to see, where we could find—

Mr. Hy Shelow: Certainly. If you look at the IRB, they agree with you, because approximately 11% of Mexicans were recognized last year—

Mrs. Alexandra Mendes: As refugees, yes.

Mr. Hy Shelow: So clearly there are some issues in relation to drug gangs, or *maras*.

The Chair: Monsieur St.-Cyr has the floor. Thank you.

Mrs. Alexandra Mendes: Oh, my, he's abrupt.

[*Translation*]

Mr. Thierry St-Cyr: I would like to come back to the concept of designated countries, because that is really at the heart of our discussion. I know that it isn't easy for you to talk about that because you do not want to interfere in Canadian policy-making; that is a legitimate concern. However, we need to be better informed.

There are two things here: there is the idea of creating a list of countries that we believe are less likely to pose a risk, and then there is the way that list is used.

With regard to the creation of a list per se, i.e., its concept, you do not appear to find that problematic. Mr. Shelow has even explained that such a list might facilitate the processing and analysis of a claimant's file, by considering from the outset what distinguishes a claimant from his or her fellow citizens.

Nevertheless, concerning a specific aspect of this bill, i.e., taking away the right of appeal from these people, are you in favour of the fact that the claimants who come from those countries will lose their right of appeal?

[*English*]

Mr. Hy Shelow: I think Mr. Abraham, in his opening statement, as well as my response to Madam Chow, indicated that we would prefer to see that there is an appeal available to all asylum seekers in Canada.

The purpose of an appeal would be to correct mistakes made in the first instance. Under other countries' procedures, as well as UNHCR procedures, it wouldn't be linked in any way to the issues you've just discussed.

[*Translation*]

Mr. Thierry St-Cyr: I assure you, Mr. Shelow, I was perfectly aware of the fact that, by asking you the question, I was getting you to repeat what you had already said. I did that knowingly, because I wanted it to be very clear. Obviously, we will not throw stones at anyone. Everyone around the table is trying to say that... and the UN HCR agrees with you, everyone has a significantly different interpretation. So, I just wanted to ascertain your position.

We talked earlier about pre-removal risk assessments, an ultimate procedure that occurs during the last stage, immediately prior to removal. Under this new legislation, if it is adopted as is, unsuccessful refugee claimants will no longer be able to use that procedure.

And yet, you pointed out in your presentation that between the time when a final decision is made that a person is not found to be a genuine refugee claimant, and the removal, and a number of events can occur and lead to a change in circumstances.

Therefore, what kind of events are we talking about that could change a decision? And would you be in favour of a mechanism allowing a file to be re-opened on demand—and not automatically as in the case of an appeal—with the authorization of the commission, if it appeared that a situation had clearly changed?

[*English*]

Mr. Hy Shelow: Again, these are not matters that are contained in the bill. It's hard to comment on them, since they're not the bill.

One of the issues we see regularly is that there are quite substantial changes in countries of origin that are very quick. They create what we refer to as "refugee surplus". These are refugees who are already in a country, or individuals who may have been rejected after a process, but then something happens in their country—a fundamental political change, or some other issue—that leads to a sudden protection need.

● (1955)

[*Translation*]

Mr. Thierry St-Cyr: My question more specifically has to do with the fact that there currently is an ipso facto appeal section. Someone appeals a decision, the appeal is granted. The case is reassessed.

Some organizations have suggested the establishment of a mechanism to reopen cases, not as a matter of right, but only if one can demonstrate that there has been a material change. Obviously, we would not want all those who have had their claims denied to request the reopening of their case.

Are you in favour of this idea of reconsidering the cases of individuals who bring some evidence that there has been a significant change in their country of origin or their personal situation?

[*English*]

Mr. Abraham Abraham: I think it's important that there is a right of appeal. Changes can happen at any time, as I mentioned in my earlier statement. It is up to us, up to the person who is interviewing, or up to the system to examine the changes that have taken place, for example, in the last five years when that country was last put on a list of safe countries. Have things changed? You cannot use it as an absolute bar, as I also said. One must look at the changes and see whether there are grounds on which the person could be given an opportunity to appeal. This is why we favour and support that there be an appeal mechanism.

This need not be a very big and formal appeal mechanism, as such. For example, if they don't have access to a second instance decision, some sort of a review mechanism could be put in place to see that all the safeguards have been taken into account before a final decision, particularly if there's been any—

The Chair: Thank you.

Mr. Dykstra has the final question.

Mr. Rick Dykstra: Thank you, Mr. Chair. I actually have two questions, but I understand we have a few minutes left.

The first question is ostensibly based on one of the things I want to be clear on—and I know, Mr. Abraham, you did allude to this in your opening comments: why it's important to speed our system along, that the speed of the system is not to prevent factual evidence from being presented and individuals from being given proper accord in terms of being able to present their cases, but speed is of the essence because the way our process works now is just far too slow.

I just want you to elaborate on that a little bit more.

Mr. Abraham Abraham: I fully agree with you. While we talk about not leaving it as an open-ended timeframe, it is important that you have a timely assessment that's undertaken, but that period should allow whoever is making the assessment to have gathered all the information or data in order to make a final decision. If you speed it up, are you by any chance speeding it up because you are under pressure?

Today, we have a backlog of almost 60,000 cases. Are we speeding it up because we want to get rid of the backlog, or are we not perhaps looking at what needs to be done in order to expedite the process with the kind of support and resources that are necessary in order to make a reasonably timely decision and not to have it drag on for a year or 18 months?

Expediting does not necessarily mean there's anything wrong with it, as long as the quality of the decision is not compromised.

Mr. Rick Dykstra: With regard to the other question that I have, one of the individuals from our committee continually references the issue of Greece and how the system works there and how he would consider Jehovah's Witnesses, for example, to be under the realm of refugee. Could you give us a quick description of the refugee process in Greece? I hate to put you on the spot, but I'm hoping that you actually do have a little bit of an update, or at least an understanding for us. Or is that an unfair question?

● (2000)

Mr. Abraham Abraham: I could give a response to you later in writing, because I'm not very—

The Chair: You can respond, but it has absolutely nothing to do with the bill.

Mr. Rick Dykstra: It would be great to get a response. Thank you.

Mr. Abraham Abraham: I could give you a response in writing.

The Chair: I think that concludes our time, gentlemen.

Mr. Abraham and your colleagues, thank you very much for coming. You've made a great contribution to our committee in trying to improve this bill.

Mr. Abraham Abraham: Thank you very much, Mr. Chairman.

The Chair: Madame Thi Lac, on a point of order.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac: The gentleman just responded that he would send written documents to Mr. Dykstra. Would it be possible for all committee members to obtain these responses, Mr. Abraham?

[*English*]

Mr. Abraham Abraham: I will address my response to the—

The Chair: Documents for everybody, is that what you're suggesting?

What I would do is send it to the clerk, sir, and the clerk will distribute it.

Mr. Abraham Abraham: I was going to say that, sir.

The Chair: That would be better, because I don't know where some of these people live either. Just send it to the clerk, and he'll find out where they go.

Mr. Abraham Abraham: Thank you, sir. I will do that.

The Chair: Thank you very much.

We will suspend for a moment.

● _____ (Pause) _____ ●

● (2005)

The Chair: Ladies and gentlemen, we're back on the record. This is the final hour.

We have three groups. From the Quebec Immigration Lawyers Association we have Pia Zambelli, who is a member of the legislative review committee; by video conference from Toronto we have a lawyer, Max Berger; we have the organization Egale Canada, with Helen Kennedy, executive director, and Michael Pelz, a researcher.

Ms. Kennedy and Mr. Pelz, you have between you up to seven minutes to make a presentation. You're first.

Ms. Helen Kennedy (Executive Director, Egale Canada): Thank you.

Egale Canada is Canada's LGBT human rights organization advancing equality, diversity, education, and justice. There are a number of important and growing needs for protection for members of the LGBT community—the lesbian, gay, bisexual, transgendered community—given the number of countries around the world that still criminalize homosexuality and the number of countries in which members of the LGBT community are persecuted and the few countries that actually recognize claims based on sexual orientation. Canada has been unique among nations in providing protection for people from around the world on the basis of sexual orientation, and it was one of the first countries to recognize LGBT claims under the membership in a particular social group.

We have a number of concerns about this bill. The processing timelines, we believe, are unrealistic for LGBT claimants. The timelines proposed will have a dramatic, negative impact on the ability of LGBT claimants to establish their claims. LGBT claimants generally take longer to make a claim based on their sexual orientation. They are embarrassed and ashamed to describe problems associated with their sexual orientation and they require longer to establish proof of their sexual orientation.

The vast majority of LGBT claimants are not aware of their ability to file a claim based on their sexual orientation until long after their arrival in Canada. Sexual orientation as a basis for refugee status is not mentioned in the Immigration and Refugee Protection Act; it's not in the regulations; it's not on the Immigration and Refugee Board's website. The international Convention Relating to the Status of Refugees doesn't mention sexual orientation as a basis for a claim.

The coming out process also significantly impacts upon an LGBT claimant's ability to seek legal advice. It may take years before a person is comfortable enough to have his or her sexual orientation known and speak to a lawyer or counsellor about seeking help. The requirement to meet with a government official to explain the basis of the claim within eight days is, we believe, unrealistic and will inhibit many LGBT claimants from openly expressing their sexual orientation and the history of problems that they have experienced. Many LGBT claimants come from repressive, homophobic countries and will be reluctant to speak to any person in a position of power about their sexual orientation and related problems, particularly a government official. We would recommend the deletion of the eight-day interview timeframe.

The hearing after 60 days will also pose a significant obstacle for LGBT claimants to establish their sexual orientation. There's no documentary proof of sexual orientation, as there is with religion or political membership. The LGBT claimants typically establish their sexual orientation through their level of involvement in the Canadian LGBT community. The 60-day hearing will pose a significant obstacle for these claimants to establishing that they are in fact at risk. Persecution based upon sexual orientation is a hidden and under-reported form of persecution. Major human rights reports often don't report on human rights violations based on sexual orientation; therefore it takes much longer than 60 days for claimants and counsel to document risks of LGBT persecution in the particular country of origin. We would recommend the deletion of the 60-day timeframe.

Designated countries of origin likely include those in which LGBT claimants have a well-founded fear. Many countries that seem to be peaceful, stable democracies are countries in which LGBT claimants are most at risk. Jamaica and many other Caribbean islands, for example, and Hungary, and democratic countries in Africa are examples of countries that otherwise appear safe but are very dangerous for members of the LGBT community. Singapore is a peaceful democracy, but it criminalizes homosexuality. Given the under-reporting of abuse based on sexual orientation, there's no mechanism that seeks input from the LGBT community regarding the designation of countries of origin for the purpose of denying the right to an appeal. We recommend the removal of the all provisions related to the designated country list.

● (2010)

Let me turn to limitation on humanitarian and compassionate applications. In many cases, LGBT claimants will be found to be at risk of discrimination or hardship, but not persecution. In these cases, it is critical for LGBT claimants to have the opportunity to demonstrate that they will face severe hardship, if not persecution, and that the risk justifies their remaining in Canada on humanitarian and compassionate grounds.

While we applaud the implementation of the refugee appeal division, we feel that considering only new evidence for an appellant is not realistic. All evidence needs to be considered, especially in light of the fact that the minister is able to use any evidence in the case. We recommend that all relevant evidence should be considered at this stage.

Thank you. I'm totally open to questions, if you have any. Thank you for the opportunity to be here.

The Chair: Oh, I think they'll have some, but we'll hear from the other people first, Ms. Kennedy. Thank you for your presentation to us.

Mr. Berger, you may have up to seven minutes.

Mr. Max Berger (Lawyer, Max Berger Professional Law Corporation, As an Individual): Thank you very much.

By way of background, I am an immigration lawyer and I've been appearing before the board since 1989, the year of its inception. I appear quite regularly before the board.

I would characterize this act as one step forward and one step back. If I had to choose between Bill C-11 and the status quo, I would...[*Inaudible—Editor*] ...given the restrictions on refugee rights that we see in this legislation.

In my seven minutes, I want to focus on—

The Chair: Mr. Berger, I'm sorry. You went off the air for a minute. Could you repeat what you just said?

Mr. Max Berger: I'm not sure at what point I went off the air, but I was saying that if I had to choose between Bill C-11, the current legislation, versus the status quo, I would choose the status quo, given the restrictions on refugee rights we see in this legislation.

In my seven minutes, I want to focus on just four points that I see as the most egregious in this legislation.

The first point is on the eight-day interview. A lot has been said about it being a ridiculously short period of time, and of course I agree with that, but not much has been said about the abolition of the PIF.

Under this new act, the PIF, the personal information form, which has been the anchor document of our refugee system for the last 21 years, is going to be abolished for this interview. I'm of the school that if it ain't broke, there's no need to fix it. The PIF and the way the narrative is prepared, in a calm, civilized manner in a lawyer's office, is the best way for a claimant to prepare his story for the board.

What we're replacing it with is going to be similar to the port-of-entry interview, and we've all had terrible experiences because claimants are not sophisticated narrators of their history. The interview is going to come out all scrambled and jumbled: a story with no head and no tail.

If the objective of putting the person in front of an interviewer in eight days is to get hold of him before he has a chance to be contaminated by fraudulent consultants plying them with fraudulent stories in their community, well, that objective is not going to be served, because someone who wants to commit a fraud will just find a fraudulent consultant earlier, within the eight days. So my proposal is to just leave the PIF as it is and abolish the eight-day interview altogether.

The second point is with respect to the first-level decision-maker being a civil servant. I think it's a bad idea. The goal should be that we need the best possible decision at the first-level decision-making process.

In regard to the current GIC appointees, while I don't like the politicization of the process, we have members who come to the board with a wide variety of experience, having been on boards and tribunals in the past. What we're doing now is ratcheting down the quality of decision-making by restricting it to civil servants. I think that's a mistake.

My third point is with respect to the designated country list. Here, I'm going to suggest a compromise between the government's position and that of most of the refugee advocacy groups that are against the list, including me.

My compromise is this. If you are from a list country and you tell a story to the board that is true and you still lose your case, not on credibility, but because perhaps there's been a change of circumstances or on state protection or an internal flight alternative.... But if your credibility has not been challenged and you're from that list country, you should still have the right to a RAD, to the refugee appeal division. You should have as much right to the RAD as someone from a non-list country whose credibility is completely trashed at the first-level hearing.

The Czech Republic is a perfect example, because the Czech Republic is going to be the first country on that designated list. I do a lot of these Czech Roma cases. In almost all of them, their credibility is not impeached. They lose because the board seems to think that in the last year or two there has been a miraculous change in the government in the Czech Republic that makes it safe for the Roma claimants.

That's my compromise position here. So the RAD would be denied only to those people from a list country who have been found not to be credible in their history of persecution.

The fourth and final point, Mr. Chair, is that we have to make sure that no one falls through the gaps. Here I'm talking about the fact that there's no H and C and no PRRA within a year of the final negative RAD decision. There are two issues here.

● (2015)

First, in that one-year window, if new facts emerge that would shed a different light on the claim and demonstrate a real well-founded fear of persecution, what can we do for that person to ensure he doesn't fall through the cracks? Because I don't think our courts would countenance him or her being refouled. I think it's against our Charter of Rights and Freedoms. My suggestion for this is that in such an eventuality, the refugee board be allowed to have a motion to reopen the refugee claim. That was something that was proposed when IRPA was being contemplated, but in the end it was not adopted.

The second aspect of this—and this is the final point, Mr. Chair—is with respect to falling through the gaps. Not every claim of persecution is captured by section 96 or section 97, either by the convention refugee decision or by cruel or unusual punishment in section 97. I speak in particular about claims that are based on extortion by criminal gangs. Those are the kinds of cases, and we see a lot of them, where there are legitimate claims—these claimants are in fear for their life—but there's no nexus to the definition so they can't win under section 96. The courts have been ruling that those claims are based on a fear of generalized violence, so they don't fall under section 97. And under Bill C-11, those kinds of claims would fall right through the cracks. They couldn't win in the refugee hearing, and they don't have the right to an H and C, to a humanitarian and compassionate application. So we need to make sure that those kinds of claimants do have the right to H and C, and H and C based on risk, right away.

Thank you.

The Chair: Mr. Berger, thank you for your presentation. You obviously know your material, and we appreciate that.

Our final speaker is from the Quebec Immigration Lawyers Association, Ms. Pia Zambelli.

● (2020)

Ms. Pia Zambelli (Member, Legislative Review Committee, Quebec Immigration Lawyers Association (AQAADI)): I am here on behalf of the Quebec Immigration Lawyers Association, which has some 150 members in the province of Quebec. I have been practising immigration law since 1988, and I served for five years on the Immigration and Refugee Board, but the views I am presenting now are consensus views of the immigration bar in Quebec.

AQAADI's position, in a nutshell, is that the Canadian refugee determination system does not need Bill C-11. This so-called balanced reform package is expensive, controversial, and largely misses the mark. Canada's current refugee determination system as established by 1989 amendments to the Immigration Act of 1976, with its focus on a high-quality oral hearing before an expert independent quasi-judicial tribunal, is considered among the best in the world. The major problems that had emerged over the years since 1989 had been some dubious decision-making attributable perhaps to patronage appointments and the patronage appointment system in general, the lack of an effective error correction mechanism, and as of late, slow processing times at the IRB. Bill C-11 does little, if anything, to remedy these problems.

The IRPA, which is our current legislation, brought in by the Liberals, sought to fix the error correction mechanism problem by instituting the RAD. Unfortunately, it was not proclaimed in force; but it can be, at any time, with or without Bill C-11. The RAD is already in our legislation. Slow processing times at the IRB were a product of the current government's failure to fill vacancies on the IRB. That problem I understand is now resolved, and the IRB has all its members. The patronage appointment issue still has not been solved.

Instead of addressing the real problems, Bill C-11 seems to be principally directed to a problem that does not really exist: namely, a flood of bogus refugee claimants clogging the system. This is not a true premise, and a false premise should not be the basis for a reform.

The 1989 amendments to the Immigration Act effectively brought an end to floods of unfounded claims that we saw prior to 1989. Today, Mexican and central European Roma claims have been identified publicly by the minister as the culprits, but these claims are not bogus. Even the Federal Court agrees.

Other problems with the bill, aside from its faulty premise, are as follows.

The reform seems dependent on ultra-fast timelines. As almost every witness has said, such timelines are unfair to refugees, and have never worked in the past, in any event. The restriction in clause 4 on access to humanitarian and compassionate relief are unfair and may violate international norms. There must be some way for refugee claimants to raise any type of humanitarian issue prior to the 12-month period, in case something arises in their country of origin, in case they have a medical problem, or in case they have a problem involving the best interests of their children who may be Canadian citizens. AQAADI's suggestion would be to give humanitarian jurisdiction to the RPD or to the RAD, or simply allow for an application for an exemption from the 12-month bar in certain cases.

The institutionalized interview process in subclause 11(2) will cause delays and prejudice to refugee claimants even if it doesn't occur within eight days, even if it occurs within a longer framework. It's not a good idea. From an efficiency standpoint, it could cause scheduling delays because counsel needs to be present and an interpreter will need to be present. Furthermore, taking and recording a prior statement will mean that these statements will be routinely used in the full hearing to discredit claimants, as has been done, not in every case, but frequently with the port of entry statements. Initial statements made by victims of traumatic experiences may be incomplete or confused. AQAADI's suggestion would be to delete this concept of a formal interview process and stick with the personal information form.

● (2025)

The designated country provisions in clause 12, which restrict access to the RAD, present a host of problems. Designation will presumably be based on safety, but this is not specified anywhere, nor are there any criteria provided.

The fact that classes of nationals within a country can also be designated—for example, homosexuals from Nigeria, Jews from Russia—is clearly discriminatory. It's not just a country that can be designated. There's a power to designate classes of nationals within a country and deny them an appeal. This new approach for Canada—it might exist in Europe, but it's new here—is apparently a response to a crisis with respect to bogus claims from Mexico or central European Roma. However, since there is no crisis, there is no need for this provision. Should there ever actually be a crisis, existing disincentives to filing manifestly unfounded claims or other administrative measures will be sufficient. I am referring to the credible basis provisions in subsection 107(2) of the existing IRPA, and subsection 231(2) of the regulations under IRPA. As well, groups of claims have been expedited administratively in the past within the IRB. There can be an administrative decision to expedite certain groups of claimants.

The provision is also unworkable, as it will likely be impossible to get agreement on what countries can be designated. It should be deleted from the bill.

According to clause 13, the RAD will be implemented. In addition, a power to receive new evidence has been added. The RAD could be an enhancement to the current system, especially if a completely merit-based appointment system is instituted.

The Chair: Perhaps you could wind up, Ms. Zambelli. Thank you.

Ms. Pia Zambelli: Yes.

On the PRRA process restrictions, there should be at least some way of seeking exemption from the 12-month bar, because there is a constitutional requirement to assess risk before removing someone under section 7 of the charter.

Finally, AQAADI objects to the fact that under clause 26 first-level decisions will be made by public servants, as they may lack the necessary independence and possibly even qualifications. The 10% minimum requirement of members that have a legal background would be deleted by the addition of clause 26.

Thank you.

The Chair: Thank you, Ms. Zambelli.

Ms. Mendes has some questions for the witnesses.

Mrs. Alexandra Mendes: Thank you very much, Mr. Chair.

If I may, I'd like to start with our guests through video conference, Mr. Berger very specifically. This follows on what Ms. Zambelli just mentioned.

With regard to the issue you touched on of civil servants versus Governor-in-Council nominations to provide this first line of people who are going to be judging cases or giving a first impression on cases of people coming to our borders, how would you suggest this selection of people who will be determining who is a valid claimant, if you wish, should be done? How should we go about naming them and selecting them?

Mr. Max Berger: This has been the $64-million question for many years. What we should not have at the end of the day is the minister having the final say as to who's in and who's out in terms of selection. That simply leads to patronage. That's just politicizing the appointment process.

It should be a merit-based system. There should be a panel of experts, human rights advocates, put in place, and they should select the best people around to do this job.

What I indicated I was against was its being restricted to or primarily being civil servants. I don't think that civil servants bring to the table the wide range of experience we need for this type of decision-making. I suspect that if it's going to be civil servants, it's simply going to be the current RPOs—refugee protection officers—or tribunal officers, under a different title. I don't think that will lead to the best possible result.

● (2030)

Mrs. Alexandra Mendes: But their main function, from what I understand, is to gather information. I think Mr. Dykstra brought this point to us, that the first meeting with the officer is not going to be a decisive meeting—if I understood correctly. It's for gathering information.

Mr. Max Berger: We're talking about two different things here. There's the procedure after the eight days and then the procedure after the sixty days. I'm talking here about the sixty-day procedure, which the legislation tells us will be done by the first-level decision-makers, who are going to be the civil servants. That's my understanding.

Mrs. Alexandra Mendes: But they are going to be the same people on the eight-day one.

Mr. Max Berger: That's not clear to me. I'm assuming so, but that's not entirely clear to me.

Mrs. Alexandra Mendes: It's not clear to me either, so that's why I'm asking the question.

Mr. Rick Dykstra: His understanding is not quite correct.

Mrs. Alexandra Mendes: But you will bring that information back to me....

Mr. Rick Dykstra: Sure. Actually, Ms. Wong will.

Mrs. Alexandra Mendes: Okay.

Back to the famous PIF, the personal info form, Mr. Berger, you say that the personal information form was a very useful way of gathering information in those first days following arrival, so you would eliminate the eight-day gathering time or process to keep the PIF. Is that what you were suggesting?

Mr. Max Berger: That's what I was suggesting. The PIF has served us well over the last 21 years. The PIF is the anchor document put before the board, which contains the claimant's history of persecution. That PIF is composed in the tranquility of the lawyer's office. It's a calm, civilized way of putting together, in a chronological order, the refugee claimant's history. What we're proposing to replace it with is this interview by someone who's meeting the claimant for the first time, and I can tell you, the story is going to come out in a jumbled and scrambled way, with no head or tail. There's not going to be any anchored document before the board. There are going to be omissions in the story. It's just a bad idea.

Mrs. Alexandra Mendes: There will be no formalized manner in which to present information. It would just be a jumble of odds and ends that people would think of.

Mr. Max Berger: It's going to come out because.... We already have experience with what's known as the POE notes, point of entry notes. Under the current system, a claimant is interviewed at the port of entry when they make a claim, or at the inland immigration office, and the officer asks a lot of questions about their claim—who are you afraid of, what happened to you, why did it happen—and the story comes out in a very incoherent manner, because the officers aren't familiar with the person's background, the claimant is nervous talking to a person in authority—

Mrs. Alexandra Mendes: If I may interrupt, is that, Ms. Kennedy, one of your fears when you mentioned the problem of those eight days being insufficient for a gay, lesbian, or transgendered person to present a claim?

Ms. Helen Kennedy: Absolutely. I would completely concur with those thoughts. It's not realistic for an LGBT claimant to comply with that eight-day requirement. Most LGBT claimants file not at the port of entry, but after entry, and just for them to find their way to the inland office to file their claim to set up their welfare, their housing—there are so many things a person would have to deal with in the day-to-day lives of people. There's no way you can realistically complete that in eight days.

The Chair: That's it. Thank you.

Monsieur St-Cyr.

[*Translation*]

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

I will start with a question for Ms. Zambelli, but before I begin I must say that I am at the very least disappointed that the Quebec Immigration Lawyers Association should appear before this committee and deliver a presentation exclusively in English. For a Quebec-based organization, it is rather disappointing, and we are far from the days when the AQAADI was advocating for the rights of its members to proceed in French before the IRB.

My comment being made, I wanted to address the issue of countries—

● (2035)

[*English*]

The Chair: Monsieur St-Cyr, I think you're out of order saying something like that. The witness has every right—

[*Translation*]

Mr. Thierry St-Cyr: That is good timing, as I am done, Mr. Chairman.

[*English*]

The Chair: Well, I'm going to tell you what I think and you can take that as it may. You and I have the right to speak in French or English, and so do witnesses have the right to speak. You don't have any right to challenge them as to whether they speak one language or another.

[*Translation*]

Mr. Thierry St-Cyr: Absolutely. You are quite right, Mr. Chairman, but I am entitled to say that I am extremely disappointed by this, however. And that is that.

In fact, we are done with this subject, and we may continue our discussion.

[*English*]

The Chair: No, you're not entitled to do that. I think we need to be courteous to witnesses. If a witness wants to speak English or French, they're entitled to do that.

[*Translation*]

Mr. Thierry St-Cyr: So, I will continue. I simply made a comment and I would now like to get back to the subject at hand, the issue of designated countries.

If I understand your presentation correctly, you are against the fact that individuals would be denied the right to appeal for any number of reasons, in the end. During the committee's consultations, again today there were some proposals for a mix, alternatives and various solutions, as esoteric as they may be.

Essentially your position is based on the principle that to appeal is a right and all should have access to this right. Have I understood your position?

[*English*]

Ms. Pia Zambelli: If I may speak in English, that is essentially the position of AQAADI. You've said it exactly correctly. That is our position.

[*Translation*]

Mr. Thierry St-Cyr: From a legal standpoint—and this is why I would like to know your opinion on this point, as I am not a lawyer myself—it would seem to me that the cases of nationals coming from countries deemed safe are more difficult to deal with. In some ways, the cases of individuals coming from countries where persecution is known to occur is something of a no-brainer.

So, am I right in saying that when it comes to countries that are deemed safe, things should be less black and white?

On the other hand, if this is true, would it not be somewhat ridiculous to withdraw the right of appeal specifically from those whose cases are more contentious and difficult?

[*English*]

Ms. Pia Zambelli: Yes, exactly. First of all, as I was saying before, it's going to be virtually impossible to get together an advisory group that will be able to agree on which countries are safe. We will never agree that Mexico is safe. We will never agree that Czechoslovakia is safe for all its citizens. Maybe we will say the United States is. Maybe we will say some European countries are, but there are always exceptions. When there are exceptions, it is because the situation is very delicate and extremely nuanced. That is why depriving them of the error correction mechanism—that is, the refugee appeal division—is really entirely the wrong thing to do for those particular countries.

[*Translation*]

Mr. Thierry St-Cyr: There's also been a lot of talk about timelines. The government's concern is that by giving individuals so much time to prepare their cases, they would be able to fabricate a story, evidence, or lie in some way.

Would you not say the opposite would be true? Liars would find it easier to invent a story in eight days. Would you not say that those who have suffered great trauma, have witnessed serial murders or been raped, would have more difficulty producing their story in eight days' time than those who would lie?

[*English*]

Ms. Pia Zambelli: Yes. The genuine refugees would be more likely to give a statement that wasn't coherent within eight days than would the refugees who were lying, which is why the system that is proposed is rather ironic.

[*Translation*]

Mr. Thierry St-Cyr: Very well.

I have a question for Mr. Berger.

You referred to the proposal to allow the appeals of individuals coming from one of the designated countries on the list, if the credibility and truthfulness of their story is accepted. It can be said that generally, in all legal systems, people do not like to have their decisions challenged, and that is the reason why appeal mechanisms are provided. They ensure that judges and board members make every effort to issue the right decision from the outset so as to avoid any appeals.

That said, under the provision you propose, we would end up in a situation where if an official simply stated, without any grounds, that he or she did not believe a person's version of their story, this person would automatically lose the right to appeal and therefore the option to request a review of the official's decision.

Is that not a little too easy? Will we not end up with officials who say that they simply do not believe the story in order to reject a case? Then, that would be the end of it and there would be no appeal?

● (2040)

[*English*]

Mr. Max Berger: I oppose the designated list in the first place, but if there's going to be a designated list, I propose a compromise between the government's position and that of most refugee advocates. The compromise is that only those claimants from the list countries whose stories are disbelieved would lose their right to the RAD appeal.

The Chair: Thank you.

Ms. Chow has the floor.

Ms. Olivia Chow: Less than an hour ago Abraham Abraham was here, from the Office of the United Nations High Commissioner for Refugees, and my Liberal colleagues were pushing in support of the safe countries designation. I hear very clearly from the three witnesses here that they do not support that kind of designation and that this kind of designation would have serious implications for gay and lesbian, bisexual, and transgendered refugee claimants, especially from a lot of the African countries, or Jamaica, etc.

To Egale, and then to the rest of the witnesses, have you been able to communicate that concern to the Liberal Party of Canada? Both the Bloc and the New Democrats are onside in not having safe countries designation, and also in making sure there are humanitarian and compassionate grounds considerations, because these too will be eliminated if Bill C-11 passes.

So Egale first.

Ms. Helen Kennedy: Yes, we're very concerned about the safe countries designation and the list, and we're more than willing to share our concerns with anybody who will listen to us. I don't think it's practical to develop this list at all, because even within Canada there is discrimination against members of the LGBT community. It's extremely problematic to develop what would be called a “safe list”. It's just not doable in terms of dealing with LGBT claimants.

I think that is one of our primary concerns, and we've communicated that to many members on all sides of the House. We hope the committee will take a serious look and stand on this particular aspect of the bill.

Ms. Olivia Chow: The Quebec Immigration Lawyers' Association.

Ms. Pia Zambelli: Yes, it's interesting, in terms of the claims based on sexual orientation, if you take the case of Jamaica, it would likely be on the list of designated countries, but it is not safe for homosexuals. Conversely, you might have a country such as Nigeria, which I don't think would be on anybody's safe country list, but there are—

Mr. Rick Dykstra: Point of order, Mr. Chair.

The Chair: I'm sorry, Ms. Zambelli. On a point of order, Mr. Dykstra.

Mr. Rick Dykstra: I don't like doing this, but if there's misinformation being put forward.... I understand you may not have all the information, but putting information forward.... We do not have regulations in place yet to deal with the issue you're speaking about.

My point of order is that it's fair to ask but not fair to say that what's in place is what's going to happen. That's very misleading and it's very unfair.

The Chair: That's a point, but I don't think it's a point of order.

Ms. Zambelli, you may continue.

Ms. Olivia Chow: Good try.

Ms. Pia Zambelli: I'm referring to the fact that in the bill itself there's a power to designate a class of nationals within a country, not just a country, but a class of nationals within a country. It's in the current bill.

For example, you may feel that Nigeria would never get on the safe countries list, but there are many decisions of the board that decide homosexuals are not persecuted in Nigeria and that they're a safe group, so to speak. To institutionalize that by putting that group of people on a list I think is not an approach we should take in Canada.

● (2045)

Ms. Olivia Chow: In England there is a case in the courts where some of the judges and the refugee determination officers said if you're a homosexual, you can go back to your home country and hide it, so you're not really in the face of any kind of danger. And that's why the applications were refused.

I'm not kidding you. It's true. It is in court right now. There is a debate in England about that, even though the new government has said it will accept gay and lesbian refugee claimants. England also has a safe countries designation, and Canada is copying its law right now.

My question is to Mr. Max Berger. If refugees are denied the right to appeal if the safe countries designation passes through Bill C-11, what kinds of challenges and what kinds of implications do you think there would be, especially to the gay and lesbian communities?

Mr. Max Berger: I suppose you're going to find a lot of gays and lesbians being refused by the first-level decision-maker, with no opportunity for an appeal on the merits or on the facts. The only appeal that will be open is the appeal that is available right now, which, as you know, is very limited. For the most part, it is only on points of law. So those folks would be out of luck.

Ms. Olivia Chow: Have you or the Quebec Bar Association communicated your position to the Liberal Party leader, Mr. Ignatieff? Has Egale done so? I'm not hearing precisely what their position is. I hear some Liberal MPs seem to be against safe countries of origin. The critic is supportive of it. Have you communicated your concern, for example?

Ms. Pia Zambelli: We will certainly do so. We were told the deadline to do so was May 13, and that they were going to take a position at the meeting the next day, but if they haven't yet taken a position, certainly we'll forward documents to the leadership.

Ms. Olivia Chow: On June 1 this committee will go through clause-by-clause of the bill, and June 3 will be the last day, when this committee will finish with this bill. It will then be sent back to the House of Commons for the report stage and third reading. There seems to be momentum among both the Conservatives and the Liberals to put this bill through the House of Commons before the summer break, which starts on June 23, so time is short.

The Chair: Thank you very much.

Dr. Wong has the floor.

Mrs. Alice Wong: Thank you very much, Mr. Chair.

Thank you very much, witnesses, for coming.

I have just a short question for Ms. Zambelli. We have 42 clauses. I want to ask which clause actually defines the safe country of origin. Do we have a list yet? Is there a list there?

Ms. Pia Zambelli: It is clause 12 of the bill, amending section 109—

Mrs. Alice Wong: Is there a list already?

Ms. Pia Zambelli: No, there is no list, as far as I—

Mrs. Alice Wong: That means the list has to be defined later, not now, right?

Ms. Pia Zambelli: Yes.

Mrs. Alice Wong: Even within the same country of origin, pockets of people will be exempt, so again that hasn't been decided. It's country by country. I just wanted to let you know about that.

About the eight days, I think a lot of misinformation has been given by witnesses, unfortunately. The idea, I believe, is that the eight-day interview will be completed by an immigration officer with the assistance of an IRB officer.

For the sixty-day period, the significant change is that the Governor-in-Council decision-maker will be phased out and replaced by members employed under the Public Service Employment Act. The chair of the IRB came before our committee, and he will determine how to fill those spots. He said it will be a thorough, wide process, and we will not include only civil servants. That might be something we'd like everybody to know.

About Mexico: if you all remember, Mexicans are not part of the false claimant list. Last year 89% of Mexican applications were turned down, and we had to put back the visa application requirement. From the 92,000 who applied as refugees before the visa requirement was dropped, it came down to a handful. That means Mexico is probably where some of the false claimants came from.

About interviews: I understand some people are concerned about people who have evidence of trauma or vulnerability, but the interviewing officers the Immigration and Refugee Board appointed have the flexibility to adjourn interviews to a later date in cases where they find it necessary. The reformed system looks at that as well.

I was really disappointed that people are still happy with the present situation, whereby we have 18 months of wait time for genuine refugee claimants and we have people who have been here for ten years who still haven't got a final answer. I don't know why people still feel the present system is working.

I want to share my time with Mr. Calandra.

● (2050)

Mr. Paul Calandra (Oak Ridges—Markham, CPC): How much time is left, Mr. Chairman?

The Chair: Three minutes.

Mr. Paul Calandra: All right.

I was going to follow up on what Madam Wong asked: what criteria you were basing your assessment of what the safe countries of origin would be. You seem to have identified the Czech Republic and a number of other countries that would be safe countries of origin. I'm wondering what criteria you have used in both this legislation and any other to come to the conclusion that the Czech Republic, Mexico, or any other country would be a safe country of origin.

Ms. Pia Zambelli: I was basing that on public statements made by the minister.

Mr. Paul Calandra: So nothing you've seen in legislation?

Ms. Pia Zambelli: There is nothing yet in the legislation.

Mr. Paul Calandra: So you're just speculating, essentially.

Ms. Pia Zambelli: Based on the minister's statements, yes.

Mr. Paul Calandra: You said the reforms would be very expensive and there's not a rationale for this. Should anything we do be based on reducing the costs, as opposed to the effectiveness? Should Canadians expect a system that is cheaper, or should they expect a system they can respect and that helps not only Canadians but also the refugee claimants to respect the institutions of government and those that support the government?

Ms. Pia Zambelli: If the system were expensive but a good system and would solve the actual problems, I wouldn't characterize it as too expensive. The problem with this, in our opinion, is that for the money being spent, I don't know that it's going to solve any of the core issues, and it could even create more problems.

Mr. Paul Calandra: Okay. You also mentioned the personal information form. Has no one ever stretched the truth on a personal information form?

Ms. Pia Zambelli: Yes, absolutely. There are claims that have been found to be fabrications based on a false story.

● (2055)

Mr. Paul Calandra: Whether it is eight days or 28 days, there are still individuals who do that.

Ms. Kennedy, it strikes me that it would be very difficult to reform the system in any way, shape, or form that would satisfy all the criteria you have in order to make it a system—I don't want to say that you could "trust"—for the individuals you represent, the lesbian and gay community, that would give them the confidence that their rights would be protected.

Ms. Helen Kennedy: What is your question?

Mr. Paul Calandra: My question is basically could we ever create any type of system that would give you the confidence that the lesbian and gay community would be protected? It's a pretty simple question.

Ms. Helen Kennedy: Yes. I'm sorry, I misunderstood how you framed it.

A fair system would be a very good one.

Mr. Paul Calandra: Can you give specifics?

Ms. Helen Kennedy: It would be one that is open and inclusive.

We have done an in-depth analysis of every single claim in Canada since 2004 based on sexual orientation.

Mr. Paul Calandra: I'm sorry, I have a minute left, and so I'm going to interrupt you.

I'm just looking for specifics.

Ms. Helen Kennedy: The timing would be huge. If it was left at 28 days, we would be happy with that. We think eight days and 60 days are not doable.

Mr. Paul Calandra: Eight days aren't good, but if we perhaps stretched it to 28 days, that could potentially be good. There's some room.

I don't want to put words in your mouth, but perhaps you're also suggesting 60 days might be too quick.

Ms. Helen Kennedy: Nobody is happy with claims that go on for 19 months or 10 years. It doesn't serve anybody's purpose.

We have to look at a more efficient way of handling the claims in a fair and equitable manner. It perhaps means employing more adjudicators. It certainly means better training for the adjudicators.

Not every LGBT claim from Mexico is a false claim. I think these are stereotypes that we're putting on people, specifically the LGBT community.

Mr. Paul Calandra: Thank you.

The Chair: Monsieur St-Cyr has time for a very short question.

[*Translation*]

Mr. Thierry St-Cyr: I would like to begin by reassuring my Conservative colleagues. Ms. Zambelli and myself agree that the issue of designated countries should not end up in the legislation. Ms. Zambelli was never one of my former employees. I wanted to reassure you in that regard.

Some hon. members: Oh, oh!

Mr. Thierry St-Cyr: Let's move to more serious matters. As you are lawyers, I wanted to ask you about the provisions regarding the right to be represented by counsel at all stages, including during the interview process that is provided by law.

It seems unclear to me. Clause 8 deals with the minister's right to decide on who may or may not attend, specifically before the officials. Later on, under clause 23, we see that individuals can have representation before the board. That said, we do not know if that would include the interview itself. There are no details as to whether an individual could be represented by legal counsel or some other type of counsel.

First of all, do you have the same understanding as me of the fact that nothing in this legislation guarantees an individual's right to be accompanied by legal counsel at this stage? Second, if my interpretation is correct, do you believe that is inappropriate? Third, do you believe the committee should specifically include this point in the legislation?

[*English*]

Ms. Pia Zambelli: Yes, there is an allusion or a veiled reference to the right to counsel at the interview. The phrase in section 23 in English is a "person who is the subject of Board proceedings". In French, it's "devant la Commission". In English, it's more clear that it could include the formalized interview process.

I think the right-to-counsel reference could be stronger. It is very important in the context of a bill like this, which takes away a lot of rights, that it is specifically and explicitly guaranteed that the person has the right to counsel at any formalized interview process, as well as, of course, at the hearings and before the appeal division.

[*Translation*]

Mr. Thierry St-Cyr: I am done.

[*English*]

The Chair: Ladies and gentlemen, thank you very much for your contribution to the committee. I thank you for your presentations.

This meeting is adjourned until Thursday at 3:30 p.m.

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