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Chair

Mr. David Tilson

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● (1535)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, everyone. This is meeting number 19 of the Standing Committee on Citizenship and Immigration, on Thursday, May 27, 2010. The orders of the day are pursuant to the order of reference of Thursday, April 29, 2010, Bill C-11, An Act to amend the Immigration and Refugee Protection Act and the Federal Courts Act.

For the first hour today, we have officials from the Department of Citizenship and Immigration. We have Peter MacDougall, who is the director general of refugees. In fact, I think I recognize all these names; I think everybody has been here before. We have Jennifer Irish, director of asylum policy program development; John Butt, manager of program development; and Luke Morton, who is senior legal counsel and manager of the refugee legal team, legal services. You all have very long titles, but that's good.

Mr. MacDougall, I've spoken to you earlier. I'd like to welcome you and your colleagues to the committee. I think you're going to make a brief presentation of up to 10 minutes. Then my colleagues may have some questions for you.

I'd like to welcome all of you to the committee.

Mr. Peter MacDougall (Director General, Refugees, Department of Citizenship and Immigration): Thank you very much. We're all very pleased to be here to address you on Bill C-11, the government's balanced refugee reform legislation.

As you know, Bill C-11 proposes to reform our asylum system by giving faster protection to asylum claimants who truly need it, reducing the abuse of our system, and providing for faster removal of failed claimants.

[*Translation*]

We are aware of four areas of concern for the committee: the safe country of origin list; matters concerning humanitarian and compassionate claims; timelines for initial interviews with claimants and later hearings before the board; the hiring and independence of the officials who carry out interviews and hearings at the board.

Today, we will address the first two matters. I understand the committee will later be hearing from representatives of the board, who will address the latter two concerns.

[*English*]

As you know, Mr. Chair, as part of the proposed reform measures, the government would develop a safe country of origin list. Most Canadians and the United Nations High Commissioner for Refugees recognize that there are places in the world where the persecution of people is less likely to occur compared to other areas.

In his testimony to the committee earlier this week, Mr. Abraham Abraham, the UNHCR representative in Canada, noted that the UNHCR does not oppose the introduction of the safe country of origin list, as long as it is not used as an absolute bar to the consideration of an asylum claim. A safe country of origin list is a necessary tool to reform the asylum system. We have no way within the current system to rapidly address surges of asylum claims that could prove to be unfounded, such as claims from individuals whose countries have strong democratic, judicial, and accountability frameworks to protect their citizens. Without such a tool to help manage claims, our only other recourse is to impose visas.

Mr. Chair, we are aware that the proposal concerning this safe country of origin list has prompted concerns. As you know, the minister has stressed his desire to be flexible on this matter, and his appearance here on May 4 indicated his willingness to work out amendments either to the bill or to regulations that would clearly delineate the process for designating safe countries and the associated criteria.

As you know, Mr. Chair, the list of safe countries would include those that do not normally produce refugees, have robust human rights records, and offer state protection to their citizens. The safe country of origin list, however, would not be exhaustive, including countries from A to Z.

I would like to note that in developing the proposed list, we would not close the door on refugees seeking Canada's protection.

[*Translation*]

All eligible asylum claimants, regardless of where they came from, would continue to receive a fair hearing before the board just as they do today.

I would also like to underline that under this proposal, asylum claimants from safe countries of origin would receive the same hearing and access they receive under the system today.

In order to be even considered for the list, countries would first need to meet quantitative criteria. For example, only if the volume of asylum claims from a country exceeded a specified threshold and the acceptance rate for these claims did not reach a specific threshold, would that country be considered for the list.

[*English*]

These thresholds will be articulated in revised regulations, a draft of which will be provided to the committee, as agreed to by the minister.

Countries meeting the threshold would then undergo a thorough assessment, based on objective criteria. Such assessments would consider whether the country had a strong record of providing its citizens with human rights protections, and the availability of state protection and redress. The goal of these is to clearly delineate the criteria for the designation of safe countries of origin, including the factors that would trigger a review of a particular country, and ensure that the minister would not have discretion to designate a country that had not undergone a rigorous assessment.

This assessment would be done by a panel of experts from a variety of departments. It would make recommendations to the minister about which countries to include on the list once the country assessments were completed. We would also seek the input of the United Nations High Commissioner for Refugees in this process.

Using a safe country of origin mechanism to deter and manage spikes in asylum claims is not unique to Canada. Our approach would be consistent with similar policies in many European countries, including the United Kingdom, France, and Germany.

● (1540)

[*Translation*]

In addition, most European Union states also have accelerated asylum procedures for the nationals of other EU member states, which are considered to be generally safe.

Furthermore, the United Nations High Commissioner for Refugees has noted that the principle of developing such a list is not inconsistent with acceptable asylum practices.

I should note that Canada already makes determinations on country conditions, such as when ministers receive advice on which countries should be placed on the temporary stay of removal list.

[*English*]

This is also the case with visa policy decisions. Countries are treated differently. Some countries have a visa exemption and some countries do not.

[*Translation*]

Developing a safe country of origin list would fundamentally help reduce abuse of Canada's asylum system by those who are not truly in need of our protection.

[*English*]

Mr. Chair, we also realize that the proposed provisions on the humanitarian and compassionate program are prompting some concern. It is worth noting that the original intent of the H and C provision was to provide the government with the flexibility to approve exceptional and compelling cases not anticipated in the Immigration and Refugee Protection Act. It was never intended to be an alternate immigration stream or an appeal mechanism for failed asylum claimants. It should be reserved for exceptional cases.

[*Translation*]

But what has happened is that some failed asylum claimants use the humanitarian and compassionate provision in another process to try to remain in Canada. In fact, more than half of the humanitarian and compassionate backlog is now made up of failed asylum claimants.

[*English*]

The government has therefore proposed a one-year bar on humanitarian and compassionate claims following the last IRB decision, in order to discourage failed claimants from seeking to remain in Canada.

[*Translation*]

The idea here is to recognize that, since failed claimants would have just had their risk assessed, most would have access to an appeal and all could seek leave from the Federal Court.

[*English*]

In addition, these H and C applications often raise issues related to personal risk and country conditions, factors that are already considered by the IRB when it assesses the asylum claim. As a result, the proposed reforms also include removing the consideration of certain kinds of risks from humanitarian and compassionate applications.

Specifically, this concerns risks as defined under sections 96 and 97 of the Immigration and Refugee Protection Act, which are also assessed as part of the refugee protection process and in a pre-removal risk assessment. This reform would clarify the distinction between H and C decision-making and the refugee protection and pre-removal risk assessment processes.

Under the proposed measures, H and C decisions would focus on considerations such as establishment in Canada, the best interests of the child, relationships in Canada, the country of origin's ability to provide medical treatment, and risks of discrimination in that country, as well as generalized risk in the country of origin.

In conclusion, as the minister has said, the proposed measures meet and exceed Canada's domestic and international obligations and maintain the balance and fairness that are the principles of our entire immigration, refugee, and citizenship systems.

Thank you very much.

The Chair: Thank you, Mr. MacDougall.

The first questions will be asked by Monsieur Coderre.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you, Mr. Chairman.

If I understand correctly, you have just repeated to us what the minister has told you. You are here to tell us what this entails for refugees from safe countries. Is that correct?

[*English*]

Mr. Peter MacDougall: No. We're here to clarify some of the concerns that were raised by the safe country of origin and the humanitarian and compassionate elements.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, I have always believed and thought, having applied it personally, that the way to manage or prevent a flood of false refugees—let's call them that—was to enforce a visa policy. We did it with Costa Rica, in particular, when we were in power, and it worked.

Putting forward a policy that asserts that such and such a country is a safe country strips Canada, in its scheme of values and its most firmly established program, of all its power to say that each case is specific. That means, for example, that Mexico could be perceived as a safe country, whereas, at the time, more than 1,000 refugees from Mexico were accepted. That's only one example among many others.

Instead of starting to consider refugees or future refugees as people who may abuse the system by suggesting that they are from such and such a country, why not do what we did with the United States, and sign a bilateral agreement with exemption measures, like the Canada-U.S. Safe Third Country Agreement? That would be better than starting to prepare a list of all safe countries, whether it be Greece or other countries. Ultimately, such a list will give refugees certain impressions. There may be abuses because, in order to take the pressure off his shoulders, the minister will be free to respond as he did during the Olympic Games. To one refugee claimant from Japan, he answered that Japan was a safe country and that that made no sense. We don't know what is going on in one country or another. There may be problems for reasons of sexual orientation, religion, gender or other matters.

So why put two fundamental elements in this act? I think we have to retain humanitarian and compassionate grounds—we can discuss that later, when my colleagues talk about it. However, why add this matter of designated safe countries, when all we wanted was to establish a much fairer process, similar, for example, to the provisions on the Refugee Appeal Division that we agreed on in Bill C-11? I'm entirely in favour of that. We didn't need to say that we're going to establish a list of safe countries and subsequently send somewhat contradictory messages.

Saying that you'll have a panel means you're in favour of the principle.

● (1545)

[*English*]

The Chair: Stop the clock for a minute.

Monsieur Coderre, in my opinion, you're dangerously close to getting into policy questions.

Hon. Denis Coderre: It is policy; it's not politics.

The Chair: Well, it's a policy issue, and I'm not so sure that these witnesses, being staff, should answer those. I'm making that observation. If they have an answer, they can give one. I'm just saying as chairman that in my opinion you're asking policy questions.

Hon. Denis Coderre: With all due respect, when you have people representing the minister who are saying what the member from the UNHCR is saying and proposing some new process that will change the values of this country, I'm not on politics—I'm on policy. Yes, I am asking for answers on policy, because it is for those people to explain to us what the content of the legislation means.

They have the power and the authority to clarify, so they can provide me with some answers on what it means. I'm not asking them to play the role of the minister, sir.

The Chair: Well, I'm not going to overrule it, but I'm just drawing to... These people have all been around. In my opinion, it's a policy question and to ask those questions of staff who advise the minister and the government is inappropriate, but we'll leave it up to them.

You may start the clock again.

On the same point of order, Mr. Karygiannis.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): Yes, Chair. I am just wondering, if we cannot ask staff of the department about policy and get clarification of policy, then why did we invite them and why are we wasting their valuable time when they could be doing other things? If they are not here to do that, then maybe we should ask the minister to come.

The Chair: I believe the minister will be coming, and it would be appropriate to ask these questions to the minister.

Hon. Jim Karygiannis: Mr. Chair, why do we have them then?

The Chair: Well, if you have no questions, we'll move on to Mr. St-Cyr.

An hon. member: No, no—

The Chair: If you don't have any questions—

Hon. Jim Karygiannis: It's not questions—

An hon. member: It's a point of order.

Hon. Jim Karygiannis: On the point of order—

The Chair: On the point of order, I have made my comment. It's more to assist the witnesses. If they wish to respond, they can, but if they don't wish to respond, that's their business. But that's my observation.

Hon. Denis Coderre: Could we start the clock again?

The Chair: Yes.

Start the clock.

Hon. Denis Coderre: Can I go on with my questions, sir?

The Chair: Sure, of course you can.

Hon. Denis Coderre: Thank you very much.

So is it true that in the past the way of controlling abuse vis-à-vis the refugee-seeking was more by the establishment of a visa instead of changing the whole thing and saying that a particular country was safe?

Mr. Peter MacDougall: The visa has been the typical instrument to use. You also pointed to the safe third country agreement as another instrument that has been used, yes.

● (1550)

Hon. Denis Coderre: Okay. Do we agree that there is a major difference between having an agreement with a country under the umbrella of the UNHCR and defining what a safe third country is instead of saying that we have a policy of designated countries that would be safe? Is there a difference? Do you believe it's different?

Mr. Peter MacDougall: Well, I think before I answer that I want to make sure there's a clear understanding of what a safe country of origin is and a safe third country agreement; they are not the same thing. A safe country of origin—

Hon. Denis Coderre: I agree with that. That's what I want you to say.

Mr. Peter MacDougall: —designation is looking at the nationals coming from that country. A safe third country agreement, which we have with the United States, is not looking at nationals of Canada or the U.S., as you well know.

Hon. Denis Coderre: Thank you.

Mr. Peter MacDougall: So those are the instruments we've used.

Sorry, but your question on the UNHCR was...?

Hon. Denis Coderre: No. That's my point. So there is a difference between them. Thank you for that. I agree.

Mr. Peter MacDougall: Well, we—

Hon. Denis Coderre: There's a difference between a safe third country agreement, which is the passage of individuals who seek refugee status by passing through the States and seeking in Canada, and... The fact the United States signed the Geneva Convention in 1967 means it is a safe country. But Canada remains with exemptions. We can still let some individuals—because every case is specific—pass through the Canadian border. Right? Do you agree with that?

Mr. Peter MacDougall: I agree with that.

Hon. Denis Coderre: Okay.

Mr. Peter MacDougall: However, we cannot go and sign safe third country agreements with other countries around the world.

Hon. Denis Coderre: Okay, but it would also be possible to sign some other bilateral safe third agreements with some other countries. Can we do that?

Mr. Peter MacDougall: As I think you know well, because I think you were the minister at the time, the safe third country provision applies only to people coming across the land border, because the only way to verify, to be certain the person came from the United States to Canada, is at the land border. We cannot do that through air travel—

Hon. Denis Coderre: But that agreement was because of land.

Mr. Peter MacDougall: Yes, but—

Hon. Denis Coderre: But we can have some other agreement like the Schengen agreement in Europe, but vis-à-vis Canada, and instead put some Canadian agents in international airports to check everybody's passports to see if people are potential refugee seekers.

Mr. Peter MacDougall: It would be very difficult to do that, sir. You would need to be able to verify identity 100% and the only way you can do that—

Hon. Denis Coderre: That's what we're doing right now.

Mr. Peter MacDougall: No, the only way we can do that with a country with which we do not have a land border is to use a fingerprint, a biometric.

Hon. Denis Coderre: Yes, so—

Mr. Peter MacDougall: We cannot rely solely on travel documents as a means of verifying identity.

Hon. Denis Coderre: Okay. Here's my final question. Do you believe that your new mechanism, instead of the visa or some other issue, is to have a list of designated countries, that this is your way control the flow of future refugee seekers...?

Mr. Peter MacDougall: It is a way to address spikes in claims and to deter future spikes in claims.

Hon. Denis Coderre: Thank you.

The Chair: Thank you.

Monsieur St-Cyr.

[*Translation*]

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

Thank you, everyone.

I have a number of questions, but I'm going to start by making two comments on your presentation. I think some points need clarifying.

You talked about the high commissioner's position that it may be appropriate to prepare a list of safe countries. That's true; he came and told us that last week. What he especially told us is that that list could be used for procedural purposes, but definitely not to reduce the rights and privileges of people from countries appearing on the list. My colleague Ms. Chow asked the question, I asked it in turn, and the High Commissioner clearly said it in his statement. So we should back off a bit when we try to give this act the moral approval of the UN High Commissioner for Refugees. This bill doesn't just create a list—the principle of which the High Commissioner supports—but it also provides that the people affected by the list have fewer rights than those who are not. There's quite a gap between the two.

A second remark somewhat surprised me: you said that people from countries on the list would enjoy the same protection as that currently provided. That's not true. Of course, they don't currently have access to the Refugee Appeal Division, but they nevertheless have the opportunity to file an application on humanitarian and compassionate grounds, just as they have access to the pre-removal risk assessment and to the temporary resident permit, all things to which they will no longer have access under this new act. In addition, they will no longer appear before a board member, with all the independence that entails, but simply before officials. Those people will really experience a decline relative to the treatment currently provided.

That being established, I wanted to ask you somewhat the same question as I asked you the last time, when the minister appeared before us. I asked you why the minister was depriving himself of his right of appeal in the case of nationals from a country appearing on the list. That seems contradictory to me. By putting a country on the list, the minister declares that it is not very likely that the people from that country are real refugees. However, if an official rules that a person from that country is a real refugee, even if it's not very likely, the minister, under the bill, specifically waives that power to appeal.

Why is this contradiction in the bill?

● (1555)

[*English*]

Mr. Peter MacDougall: I'll ask my colleague Ms. Irish to respond to the first two questions and Mr. Butt to the appeal question.

Ms. Jennifer Irish (Director, Asylum Policy Program Development, Department of Citizenship and Immigration): Thank you.

With respect to the first question regarding the UNHCR guidelines for a safe country of origin, the UNHCR supports—

[*Translation*]

Mr. Thierry St-Cyr: I'm going to stop you. That was just a comment. I simply wanted to put things in perspective, but that's not my question; it was a comment.

My question is this: why is the minister depriving himself of the right to appeal a decision in favour of a refugee claimant, where that claimant comes from a country where it is highly unlikely that he would be a genuine candidate for that status?

[*English*]

Ms. Jennifer Irish: We'll do the third question first.

Mr. John Butt (Manager, Program Development, Department of Citizenship and Immigration): Basically it's a question of treating both parties equitably and equally with respect to determinations before the board. The minister, in his legislative package, is proposing taking away the opportunity for an appeal to the refugee appeal division by the claimant in that situation, and, equally, he is proposing taking away any opportunity for him as minister to deal with those cases.

It could be said that he has reason to have faith in the determination capacities of the refugee protection division members, in the public servants who will be appointed to that job.

[*Translation*]

Mr. Thierry St-Cyr: So what the bill suggests is that we are more prepared to accept an error in the case of people from safe countries, if that enables us to speed up the process.

[*English*]

Mr. John Butt: No, I think that would be a misunderstanding. The minister does retain the right to seek a leave for judicial review before the Federal Court with respect to decisions of the refugee protection division—

[*Translation*]

Mr. Thierry St-Cyr: But he nevertheless waives his right to appeal on the merits because, in Federal Court, he could appeal on procedural grounds, but not on the basis of the person's credibility, for example. So he is prepared to admit that errors will be made from time to time, if that can accelerate the process. That's what's provided for in the bill.

[*English*]

Mr. John Butt: It is true that the Federal Court would not be able to substitute its findings of fact for those of the tribunal, but the Federal Court can determine whether or not the determinations made by the tribunal are reasonable on the basis of the evidence heard by the tribunal. So the minister is not depriving himself completely of the opportunity to correct errors of a fundamental nature made by the refugee protection division members.

[*Translation*]

Mr. Thierry St-Cyr: In this committee, we haven't talked a lot about all the proposed transition measures. The bill as a whole constitutes a kind of trade-off. We're being offered the Refugee Appeal Division, but, in exchange, they want to apply a whole series of restrictions.

Under the bill presented to us, could people become subject to those restrictions before they have had recourse to the Refugee Appeal Division?

[*English*]

Mr. John Butt: With respect to access to pre-removal risk assessment in particular, the transition takes place at one point: when the provision limits access to a pre-removal risk assessment for 12 months after the RAD decision, the person will have had the opportunity to appeal the refugee protection division decision to the RAD. So on those, certainly, the transition is going to be seamless, if you like.

With respect to other limitations that in the legislation, there is a proposal in the coming into force provision of the legislation for the humanitarian and compassionate consideration changes to come into effect on royal assent, given that there are no infrastructure needs that have to be met for that to happen. Whereas the changes to the asylum system will come in later, when all of the infrastructure, the locations, the hiring, and the rules and regulations are in place.

So there is a gap there, but there are transitional provisions that provide the opportunity for those whose claims are rejected during that interim period to have access to agency consideration thereafter. There is also a provision for those whose claims are still pending upon the coming into force of the changes to the asylum system to have access to the current processing.

● (1600)

The Chair: Thank you, Mr. Butt.

Ms. Chow, you have up to seven minutes.

Ms. Olivia Chow (Trinity—Spadina, NDP): I didn't quite understand that. After the refugee board members become appeal division members, they will do the appeals, so you could set up the appeal division quickly and have it going. Why do you need to take extra time? Why can't you implement everything at the same time, especially that piece first? Why not have the appeal division set up? In the meantime, you are hiring extra workers to process the claims up front. Why would you do the implementation on a different timeline?

Mr. Peter MacDougall: Establishing the refugee appeal division is not as simple as moving people from A to B. First of all, the refugee appeal division will be Governor in Council appointees. That's a process—

Ms. Olivia Chow: But we already have them.

Mr. Peter MacDougall: They're appointed to the refugee protection division. They're not appointed to the—

Ms. Olivia Chow: So what do you plan to do with these board members right now?

Mr. Peter MacDougall: I think that's a question best addressed to the IRB.

But there's a more important question about setting up a refugee appeal division. You can't set it up overnight. It's a new instrument. The IRB—

Ms. Olivia Chow: So you're not transferring those folks to the other...?

Mr. Peter MacDougall: On the staffing of the IRB and the refugee protection division, those questions are best addressed to the IRB, since they're responsible.

Ms. Olivia Chow: Let me ask other questions, if that's the case.

Mr. Peter MacDougall: I want to be clear that you cannot set up a new division overnight. The IRB has to establish all the rules relating to evidence and procedures.

Ms. Olivia Chow: I understand that and I'll reserve my questions for later.

But you could hire your workers at the same time that the board is set up. You could implement all of the recommendations in the bill at the same time. Why would one do it separately in a different timeline?

Mr. Peter MacDougall: I'm not sure if I...between the H and C provisions and the...?

Ms. Olivia Chow: Why can't all of the provisions of this law come into effect at the same time?

Mr. Peter MacDougall: First of all, a very simple point is that upon royal assent. assuming that is obtained, the IRB is going to be hiring 130 or 140 new people. As you may know, the hiring processes in government take some time. They will have to lease additional or procure new building space. There's a substantial amount of administrative and—

Ms. Olivia Chow: I understand that, but that wasn't the question.

Mr. Peter MacDougall: I'm not clear on your question.

Ms. Olivia Chow: You are implementing everything at the same time.

Mr. Peter MacDougall: With the exception of the H and C provisions.

Ms. Olivia Chow: Okay. That's fine. I'll reserve my questions for later on.

What I don't understand in terms of the H and C provisions is that you said here it deters "failed asylum claimants from using them to delay removal"; you are in fact deporting them while the H and C consideration is going on. That hasn't changed. So how would that defer or delay removal? As of right now, I've seen many H and C applicants removed, deported, before the hearing is done. So that's why...I'm just reading it; it is just not factually true.

Mr. Luke Morton (Senior Legal Counsel, Manager, Refugee Legal Team, Legal Services, Department of Citizenship and Immigration): With respect to removing applicants who have an H and C pending, it's true that the pending H and C is not a legal impediment to removal. However, in some cases, the courts will grant stays and will cite the existence of the pending H and C and the delays in processing. So it's not a clear-cut—

● (1605)

Ms. Olivia Chow: About 1%, maybe.

Mr. Luke Morton: No, I think it's higher than that. I don't have the percentages, but—

Ms. Olivia Chow: It's a very small percentage.

Mr. Luke Morton: I have not seen official statistics, but my sense is that it's a lot higher than 1%.

Ms. Olivia Chow: Well, it's less than 10%, that's for sure.

Mr. Luke Morton: I'm not even confident to say it's that low.

Ms. Olivia Chow: Well, let me just ask, then, about your statement on a safe country of origin reducing abuse. How would it do that? Giving the refugees the fundamental right for an appeal, does that mean that they will then reduce abuse? I can't see the logic behind it. You are denying a person the right to appeal. How would that reduce abuse?

Because you reduce abuse by speeding up the program, speeding up the determination, and you make sure they get deported quickly. Having a right for appeal for them is fundamental. How would having that list help reduce abuse? This seems to be a complete leap of logic in that sentence, in that line of thinking.

Mr. Peter MacDougall: When you have people coming from countries that are more or less safe, that have the infrastructure in place that I mentioned—strong state protection and a good record of human rights—for people coming from such countries, there's typically a higher rejection rate at the IRB. Over time, with the expedited procedure we're proposing, the lack of access to the refugee appeal division will, we believe, deter future claimants from those kinds of countries.

Ms. Olivia Chow: Why would that happen? Is it because they would get deported faster? I think you deport the people the same way.

Mr. Peter MacDougall: The entire system is, as you say, designed to provide faster protection for those in need of protection and faster removal for those not in need of protection. So claimants who—

Ms. Olivia Chow: So do you see that you can deport those who are from safe countries faster without the appeal or deport those who are from unsafe countries a bit more slowly? What would be the average timeline?

It's the same timeline in terms of deporting them. If they're bogus, whether they're from safe countries or unsafe countries, you still deport them. Are you seeing that it'll be faster to deport those who are from safe countries?

Mr. Peter MacDougall: Do you want me to answer your first question first? How will the safe country list deter future false claimants?

Ms. Olivia Chow: So is it speed?

Mr. Peter MacDougall: No, it's not just speed. Well, it is if you see that you're going to be in... Right now if you come in and you're a failed claimant, you're going to be in Canada about four and a half years. In the new system, once you've been through the refugee protection division hearing, and if you're from a safe country, you will be out of the country in about 15 or 16 months. That should provide a disincentive to people who are thinking about coming here and thinking they're going to establish themselves over a longer period of time.

Ms. Olivia Chow: What about if you're not from a safe country?

The Chair: Thank you, Mr. MacDougall.

Dr. Wong, please.

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

Thank you for coming to the committee.

There have been a lot of myths regarding the initial interview, so why are the timelines for the first interview at the IRB so tight, and what is the intention of this interview?

I have three questions. Maybe I can ask them all first and then you can go over them.

Second, why are the details around the interviews and timelines not in the legislation? Why would they be in the IRB rules?

For question number three, can the information-gathering interview or the first-level hearing be adjourned? If so, under what circumstances?

Those are my three questions. I think there has been a lot of misunderstanding and there are a lot of stories going out on what's happening, so we need clarification from you, please.

Ms. Jennifer Irish: The first and second questions are related. Why is the time processing standard not in the legislation? Why is it in the rules?

Because this deals with an IRB process, it is more appropriate that the time processing standards for IRB processes be reflected in IRB rules.

With respect to the third question about whether the information gathering interview can be adjourned, yes, there is provision that the information gathering interview could be adjourned at the discretion of the IRB officer; for example, should they deem that they are dealing with a vulnerable claimant who requires special consideration, including the need for counsel in specific circumstances, there is a provision for dealing with vulnerable claimants in particular.

I should also emphasize that the information gathering interview is not meant to be the definitive moment for gathering all information related to the claim. In addition, even after adjournment, the claimant will have an opportunity to amend that record or to add to it right up to the end of the disclosure period before the first-level hearing.

● (1610)

Mrs. Alice Wong: Yes. So for the first interview at the IRB, the intention is to gather the basic information only. Am I right to say that? And then, for whatever needs to be used to determine their eligibility, it would be the second one, which is within 60 days. Am I right to say that?

Ms. Jennifer Irish: Eligibility decisions are made in the first three days following the initial filing of the claim. The information gathering interview is essentially intended just to gather information about the claim itself.

Under the current system, some information is gathered about the claim at the port of entry or at the inland office at the point of the claim being filed, and also through a personal information form at the 28-day mark. Under the reform package, we would essentially consolidate those two steps into one at the information gathering interview that we would suggest take place at the eight-day mark.

Mrs. Alice Wong: There has also been some concern expressed that these people might need legal counsel during the interviews. There are two levels right now. The first interview is for basic data entry and data gathering, and the second is the hearing. Can you tell us the difference between the two and clarify some of the concerns we have heard from previous witnesses, please?

Ms. Jennifer Irish: No decision will come from the information gathering interview. It is meant to gather information about the claim and to prepare the claim for the first-level hearing. Some recommendations can be made from that information gathering interview, such as how the claim will be scheduled and streamed, but there are no decisions that require counsel to be present.

But the asylum claimant does have the right to have counsel present. They may have counsel present. The counsel would not have a participatory role. But the interview would not be adjourned in order to have counsel represented there, because no decision will emanate from that interview.

So that's distinct from the first-level hearing, where an actual first level decision is made on the claim itself. That is really the determinative hearing. The hearing will take a look at the information gathered from the interview, as well as any subsequent information that has been gathered since by the claimant, in cooperation with counsel, should he wish. That will constitute the first level decision on the merits of the claim put forward by the claimant.

Mrs. Alice Wong: It is also my understanding that each applicant will be given a tape recording of exactly what they tell the interviewer. Am I right?

Ms. Jennifer Irish: That's correct. The claimant will receive two products as a result of the interview. One will be a USB clip with the actual recording of the interview. The second will be the report that comes out of that interview, which will be made available either at the interview itself or soon thereafter. But I should emphasize that these are board procedures and it will be the board itself that decides on the detail, but this is our understanding of how the board would process the information coming out of that interview.

Mrs. Alice Wong: There are also concerns that the interviewers may not have the expertise to do a good job. I remember what the IRB said when they were here.They said that when they recruit interviewers who are going to do the first level, these people will be given the proper training so that they are sensitive to the cultural issues as well as the background of these people. Am I right to say that?

Ms. Jennifer Irish: Yes. This would be a question you could also pose again to the chairperson when he returns on Monday, but he has made public statements to that effect: that the information gathering officers would have high-level training and would be fully trained officers of the board.

● (1615)

The Chair: Thank you.

Mrs. Alice Wong: Is my time up?

The Chair: It is.

Mrs. Alice Wong: Thank you.

The Chair: Before we get to Mr. Karygiannis, I have a brief question on this eight-minute business. We've had witnesses come here who have said—

Mrs. Alice Wong: You just said eight minutes—

The Chair: What did I say? Eight minutes...?

Mrs. Alice Wong: You will have eight minutes.

An hon. member: That's how much time you get now—

The Chair: All right, this is what I have to put up with here.

Voices: Oh, oh!

The Chair: We've have had some comments with respect to the eight days in this policy. For example, we've had lawyers and others who have said, well, people could come and they could be nervous, and people could come and be terrified because of here they have come from. Also, people have said that there might be a language problem.

Therefore, the question remains: that this information that is given during those eight days is wrong, for whatever reason; they didn't understand or they didn't have proper advice as to what to say. Therefore, that testimony or that information—whether you call it testimony or information—could be used against them later, even though it's inadvertently incorrect.

I suppose, finally, that one could compare this to a...I suppose I'm out of line in comparing it to this, but it could be, for example, like a police examination, where someone has been charged with something and the police are examining a witness, possibly even before they're charged. Those people are entitled to counsel. Counsel may be there and may say that they don't have to answer that or whatever.

So I'd like you to elaborate on this eight-day business. I'm sure you have seen all of the testimony that has been given on this. Could you respond to some of those comments about the right to counsel during the first eight days?

Ms. Jennifer Irish: I'll deal with some of the concerns that you have flagged distinctly.

First of all, with respect to language, there will be interpretation facilities available.

Secondly, in terms of trauma, if there is a claimant who exhibits trauma or vulnerability, or who has special considerations, such as a child, a trafficked person, or someone who has been subject to domestic violence or some other form of vulnerability, then there is a discretion to adjourn that interview.

With respect to the right to counsel, again, the claimant has the right to have counsel present; it's just that it wouldn't be regarded as essential for the interview. The interview would not be adjourned in order to make counsel available, because it's not meant to be an adversarial setting. It's not meant to be an examination. It's meant to be a process by which an IRB official facilitates the claimant in describing their claim story.

And it's not even meant to be definitive in that regard. The IRB officer is intended to make every effort to make sure it's as complete as possible to prepare for the hearing. The official will also define the expectations for the claimant for the next steps, including the right for counsel and how the hearing will actually operate, but in between that point, that interview, and the hearing itself, the claimant has the right to amend that record. They will have the right to add to that record with the assistance of counsel right up to the end of the disclosure period in advance of the hearing.

Again, it's certainly not meant to be adversarial. It's not meant to be an examination. It's really meant to be an information gathering stage to substitute what's happening now between the port of entry inland officers at the point a claim is made and the very elaborate and convoluted personal information form that is filed at the 28-day mark. The—

● (1620)

The Chair: Mr. Karygiannis, if you could just allow me one more question...

The concern that seems to be given is that if this person says something during this eight-day period and then contradicts himself or herself later, could someone say, oh, you know...? That could affect the whole process, for whatever reason.

I appreciate what you're saying. You've been very helpful. But they're nervous, scared, frightened, and their language... All kinds of reasons have been given to us. Could that testimony, if it's given in those first eight days, be used against them if it's contradicted later on?

Ms. Jennifer Irish: Well, it would not be appropriate to conjecture on how a first-level hearing would regard a changed record, except to underscore that the claimant would have the ability to amend that record with the participation of counsel through the disclosure period in advance of the hearing.

The Chair: Thank you, Mr. Karygiannis.

I'm sorry to go on like this. I've probably opened up a can of worms.

Mr. Karygiannis, please go ahead.

Hon. Jim Karygiannis: Thank you, Chair.

I'd like to explore safe country of origin with you. Would the European countries be safe countries of origin? That is, EU countries.

Mr. Peter MacDougall: Would they be safe countries of origin? I'm going to answer your question, but first I'm going to describe a bit of the process.

Hon. Jim Karygiannis: Sorry—I'd like just a simple answer.

Mr. Peter MacDougall: Well, there isn't a simple answer. We're putting a process in place. Most likely—

Hon. Jim Karygiannis: Give me a second, please.

We've been told by a lot of the witnesses who have come here to make presentations that a lot of the EU countries are safe countries of origin; if you can't be in one country, you can move into another country. So I would assume you're promoting that the EU countries are safe countries of origin.

Mr. Peter MacDougall: No. That's not the case. We would not assess a country for safe country of origin status unless it met a certain volume threshold.

Let's take a country like Germany—

Hon. Jim Karygiannis: Is Germany a safe country of origin?

Mr. Peter MacDougall: No. I'm not saying that.

Germany is a good example of a country where... We have very few claims from Germany. We would not even need to look at it because the safe country of origin tool is designed to respond quickly to spikes in claims and to deter future spikes in claims. So while many EU countries may, on qualitative human rights protection grounds, say, be “safe”, we would not be assessing the vast majority of them because they are not—quote, unquote—a “concern” for us with respect to our asylum system. We don't get volumes of claims from most European countries.

Hon. Jim Karygiannis: So in order to assess it, you must have either volume or no volume. If you have no volume, then I guess you would say that it is a safe country.

Mr. Peter MacDougall: Well, we wouldn't pronounce on it. We wouldn't even consider it.

If I take Germany historically, we would not be looking at Germany at all.

Hon. Jim Karygiannis: Would Germany today be on the list of safe countries of origin?

Mr. Peter MacDougall: In terms of the data we have on Germany today, for the last five years, we would not even consider it because we don't get very many claims from Germany.

Hon. Jim Karygiannis: Would Italy?

Mr. Peter MacDougall: Well, probably not, but sir—

Hon. Jim Karygiannis: Would Greece?

Mr. Peter MacDougall: Sir—

Hon. Jim Karygiannis: I'm just exploring the countries.

Mr. Peter MacDougall: Well, I'm trying to explain to you that there's a threshold, so we don't... The minister is going to explain in some detail the quantitative thresholds when he comes on Monday.

But unless a country has a very low acceptance rate at the IRB and has a significant level of claims in the IRB, we're not even going to look at them.

Mr. Luke Morton: Just very briefly, I think some witnesses may have suggested that there are going to be 200 countries in the world either on the safe country list or the “not safe” country list. That, I think, is part of the confusion. That's not the policy objective.

Hon. Jim Karygiannis: Well, I guess the minister will explain the criteria on Monday for the list.

Mr. Peter MacDougall: Yes.

Hon. Jim Karygiannis: So you're not privileged to discuss that with us?

Mr. Peter MacDougall: I'm not privileged to discuss the particular thresholds, but we've essentially said that if you have *x* volume of claims over a period of time, and you have a low acceptance rate, we will then—

Hon. Jim Karygiannis: Chair, stop the clock, please.

When I'm asking questions and my colleagues across the way have something to say, could they say it through you or please refrain from speaking?

The Chair: Okay. That's fair enough.

An hon. member: [*Inaudible—Editor*]

The Chair: No, no. Don't... He's right.

Please calm down.

The clock is on, Mr. Karygiannis.

● (1625)

Hon. Jim Karygiannis: Thank you, Chair.

How often will we assess these countries? Every year, once a year, every six months, every seven months, if there's a spike...? If you had civil war in a country, if you had a dictatorship in a country, and we had it on a safe list and suddenly people started coming in from that country, would you be able to respond to that quickly?

Mr. Peter MacDougall: Yes, absolutely. A minister could de-designate a country instantly in response to a change in country conditions. If a civil war broke out tomorrow in Germany, and Germany was on the list of safe countries, the minister could, the day after, de-designate Germany as a safe country.

Hon. Jim Karygiannis: Yes.

Why are we bent on having this safe country of origin? The minister is given advice. You are probably giving him advice—I would say that this is the expert panel—and most of the ministers do what they're told most of the time—or they take your advice. Why would your panel be so adamant about the safe country of origin? What's driving you?

Mr. Peter MacDougall: As the minister has said a number of times, what's driving the safe country of origin provision is the need to address very serious and significant spikes in largely unfounded claims from countries that don't normally produce refugees.

Hon. Jim Karygiannis: How many countries—

The Chair: It's time.

Hon. Jim Karygiannis: Last question, Chair.

How many countries that you're aware of—

The Chair: No, no. The clock has run out almost completely.

Mr. St-Cyr, you have a minute, maybe two.

[*Translation*]

Mr. Thierry St-Cyr: The minister promised to give us a draft of the regulations before the clause-by-clause consideration, which will be next Tuesday. When will we be receiving it?

[*English*]

Mr. Peter MacDougall: My understanding is that the minister is going to table the draft regulations when he comes to committee on Monday.

Mr. Thierry St-Cyr: On Monday evening...?

Mr. Peter MacDougall: Is that when he's coming? Yes.

[*Translation*]

Mr. Thierry St-Cyr: You expect the committee to examine the draft regulations within 24 hours and then proceed with the clause-by-clause consideration to determine what will be included in the bill?

[*English*]

Mr. Peter MacDougall: That's when the minister has decided to bring the regulations.

[*Translation*]

Mr. Thierry St-Cyr: All right.

[*English*]

The Chair: I'm going to stop right there, because this further adds to the confusion.

I need direction from the committee. You've raised a point. I'm sure others will have some thoughts. I have met the legislative clerk, who has asked me about amendments. She has requested—and this will add to your remarks—that all amendments to the bill from members of the committee be filed with the clerk by May 31, which is Monday, at 3:30.

An hon. member: [*Inaudible—Editor*]

The Chair: Well, we're into clause-by-clause.

Yes, Ms. Chow.

Ms. Olivia Chow: At the last meeting we said that we would have some discussion among parties about possible amendments. We were going to do that on Tuesday morning, which is the day after the 3:30 Monday deadline. The 3:30 Monday deadline won't work unless somehow on Monday morning.... It would be difficult for us to figure out and put together what the amendments we could put together. I have a list of amendments and I could just send it in, but that wasn't what we were talking about last week. It was Tuesday actually, so it doesn't sound right.

The Chair: Thank you very much.

First of all, I'm going to excuse all of you. I thank you very much for coming and elaborating on these issues. Thank you kindly.

The meeting is not adjourned because we are going to talk about what the committee wants me to do here.

Have you finished, Ms. Chow?

Ms. Olivia Chow: Yes, I just think it's backwards, so I understand why the clerk wants to have something sooner.

The Chair: She wants to prepare a package.

Ms. Olivia Chow: I totally agree with that.

The Chair: I guess the question is that I need guidance—

Could we have some order here? We haven't adjourned yet.

I have Mr. Dykstra and then Monsieur St-Cyr.

● (1630)

Mr. Rick Dykstra (St. Catharines, CPC): I know there's some discussion around the Monday. There may not be time, once we see whatever the minister is going to be tabling, if you think you would like us to submit amendments to that.

I think we need to have a little bit of flexibility on that from all sides. The purpose of the Tuesday morning meeting of the steering committee was to address issues such as this.

But I want to clarify something that Ms. Chow said, which was that we were going to be negotiating amendments on Tuesday with each other. If that's what she said, that's not what the Tuesday morning meeting is about. The Tuesday—

The Chair: If it's a meeting between critics, that's fine, but none of you have decided to tell the chair and the staff about a subcommittee meeting.

Mr. Rick Dykstra: Sorry—it's an unofficial subcommittee meeting.

The Chair: An unofficial subcommittee meeting...?

Some hon. members: Oh, oh!

The Chair: I have no idea what that means, but I'm sure you'll tell me in due course.

Go ahead sir.

Mr. Rick Dykstra: Well, all it is, it's a meeting of the three critics and the parliamentary secretary. It's not an official meeting.

The Chair: So we don't need to be here...?

Mr. Rick Dykstra: No. The purpose of the meeting was so that we could all make sure, from an amendment perspective, if you're going to be submitting amendments, to at least understand those amendments as to what they're going to be, and not decide amongst ourselves whether they're going to be supported or not, but simply presented so that we understood them, so that the process of clause-by-clause would move forward in a constructive way, based on the fact that we want to try to move it in a manner that has all of us working together against that 11:59 deadline on June 3, versus anyone trying to take advantage of that deadline in a way that is not constructive.

Ms. Chow, if that's your understanding, I certainly want to make it clear that we're going to be presenting amendments. We'll look at amendments, but the purpose of the meeting is not to come to a consensus on amendments. It's to understand each other's amendments.

Ms. Olivia Chow: No—

Mr. Rick Dykstra: Okay. That's what I understood from your comments.

Ms. Olivia Chow: I understand that, Mr. Chair, but I still can't square the round circle. Because if we are to submit all recommendations and amendments on Monday—

He's not listening. I'll wait.

The Chair: Excuse me just a moment. I'm sorry, Ms. Chow.

I'm going to introduce you to the legislative clerk, Lucie Tardif-Carpentier.

I have a feeling that we're moving towards having amendments presented to the clerk on Tuesday. I have a feeling that this is where you're moving. If this unofficial subcommittee is going to meet Tuesday morning... Ms. Tardif-Carpentier is saying okay, you can do that; we can move that from Monday at 3:30 to Tuesday morning. But she's just saying that it's going to be very difficult for her to prepare an appropriate package of amendments.

I have no idea whether you're going to have one amendment or 100 amendments. She's just emphasizing that it's going to be very difficult if you choose Tuesday morning.

Ms. Chow.

Ms. Olivia Chow: I have a suggestion. I already have a lot of the amendments written out. I could send them tomorrow, or even this afternoon. I could do that, but at the same time, there may be other ones after Tuesday. So perhaps once we go to clause-by-clause, you as chair could provide the flexibility for us to add some or withdraw some. Because in the past, it sometimes was quite straight; if there were new ones you wouldn't let us deal with them until the end.

The Chair: I don't think there's any problem with making amendments as we're discussing clause-by-clause.

Ms. Olivia Chow: Perfect.

The Chair: I'm just trying to make this deal work. That's all I'm trying to do.

Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Like a number of you, I have a good idea of where we're headed. Amendments are already drafted and it's not a problem for me if we deal with them on Monday, a little ahead of time, so that we can have the time to prepare and be more effective. However, I want us to agree and for everyone to understand clearly —and not once we've come to the clause-by-clause consideration— that in no case will an amendment be negatived or ruled inadmissible on the ground that it has been submitted later in the process. In my view, what is ultimately important is that we have the best possible act.

Obviously, I would point out to you that witnesses will be coming to appear on Monday evening, after the time scheduled for the tabling of our amendments. It would therefore be a bit futile to have them appear if we leave ourselves no flexibility in case someone has a brilliant idea that we would like to adopt but are unable to do so. The same is true for the regulations we'll be receiving and examining in 24 hours. I want some flexibility on the following day, Tuesday, to delete or amend amendments if there is something in the minister's regulations that I don't like or have misunderstood.

Once again, I find we're conducting a somewhat philosophical discussion because the majority of you know where we're headed and 95% of our amendments are drafted and ready to be submitted. I don't want us to wind up in the clause-by-clause consideration with a debate on the fact that the amendment was submitted at 9:01 on such and such a date, so it's rejected. If everyone agrees on this subject, there's no problem.

● (1635)

[*English*]

The Chair: Unless I'm overruled, I have no problem with amendments being made as we move along, I really don't. I can't believe that the different parties don't have a pretty good idea, as Ms. Chow says, of what your amendments are. I can't believe that you don't know that right now. You may think of more, but I'm hopeful... That's why I'm picking...I didn't want to make as big a deal of this as it has turned out to be.

For all four parties, notwithstanding this unofficial meeting on Monday at 3:30, which you're not inviting me to, if you could file with the clerk the amendments you have, it doesn't stop you from adding more, and it doesn't stop you from changing them. I'm just trying to help Madame Tardif-Carpentier prepare a package for us to work with when we get into clause-by-clause.

Agreed?

Agreed.

Mr. Rick Dykstra: Mr. Chair, I do—

The Chair: Oh, you know what? I have a list and I didn't know I had a list.

Monsieur Coderre?

Hon. Denis Coderre: That's fine.

The Chair: Okay.

Mr. Rick Dykstra: I just wanted to.... Look, I understand that there is agreement to potentially table some amendments as we go through clause-by-clause. Inevitably, that's going to happen. My hope was—and I thought there was agreement from all four parties—that we were going to be submitting all of our amendments before we got to clause-by-clause so that we had an understanding of the direction we were taking. If someone or one of the parties is not... And, look, the only exception I can make is that, as Terry rightfully points out, how are you supposed to submit amendments to potential...?

That said, what the minister is going to be tabling isn't anything that's going into the bill itself. He's tabling regulations that we can potentially discuss and potentially provide advice to the minister on.

While I think your question is valid, it should be clear that we are not getting an amendment to a clause that you're not going to see before you submit your amendments. What you're not going to be able to see is what the regulations are going to look like before you've submitted your amendments.

While I understand the concern, it should be clear that we're talking about regulations. We're not talking about actual clauses within legislation. It's my hope that the reason we would be submitting amendments on the day of, versus in advance, is that you forgot something or you thought something came up, versus holding back nine or six or four amendments for no reason.

I know that's not under your control, Chair, but I thought we had an agreement on that among the parties.

The Chair: And you know what?

An hon. member: I don't think we do—

The Chair: And you may well... The reason that Monsieur St-Cyr has made some comments about getting regulations or draft regulations... I don't think this committee can amend draft regulations. Some of you are more experienced than I am on this, but I don't think you can. But it might spur on some amendments.

I have Mr. Coderre and then Mr. Karygiannis.

● (1640)

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, first, this is a bill that will have a considerable impact on people's lives.

Second, I would like us to show some flexibility because this is an important moment. Since my colleague Mr. Dykstra has probably already seen the regulations, and as we always work in good faith here in any case, perhaps it would have been more helpful for us to receive the regulations right away because I'm sure they won't be drafted Monday night. We could have been given them right away; we're all in good faith. We would have worked in that direction, and we would have seen whether there were any amendments that should be introduced in the meantime. Here I must admit I feel rushed.

[*English*]

And the more I ask questions, the more I see things. There's yes, 95%, probably we all know what we're doing on both sides, but I'm starting to have some issues, like the designated country. But saying that, I don't want to filibuster; I want to make sure we make things happen. That's the reason we're sitting until midnight on June 3. It would be appropriate to send those regulations in advance so that at least we can read and start the work. Because if—

An hon. member: [*Inaudible—Editor*]

Hon. Denis Coderre: That's it. Okay? Confidential: you have our word that there won't be any leaks or stuff like that—

The Chair: Okay. Why don't you talk about that among yourselves?

Hon. Denis Coderre: No, no. That's important because, as you said, there might be some amendments. We don't know what it is.

The Chair: Well, things are going on that the chair doesn't know about, so you know....

Mr. Karygiannis—

Hon. Denis Coderre: Well, in my case, I would invite you to every meeting.

The Chair: You're so kind.

Some hon. members: Oh, oh!

The Chair: Once again, I've lost control of the meeting.

Mr. Karygiannis, you have the floor.

Hon. Jim Karygiannis: Thank you, Chair.

Chair, as long as we have your understanding that you will be flexible and that amendments can come from the floor as we're discussing this...

The Chair: Does anyone else have anything to say?

Mr. Rick Dykstra: On that topic, I do. On a point of order, or at least on a point of clarification, I would like to speak before these witnesses are heard.

The Chair: Okay. We have a point of order. We're still on the record. Before we get to the next witnesses, do we need time...?

Okay, we're way over our time, but we'll try to solve that somehow.

We're officially into the second hour.

Go ahead on a point of order, Mr. Dykstra.

Mr. Rick Dykstra: I just want to get some clarification. One of our witnesses is actually a candidate for the Liberal Party of Canada in the next federal election. He's a former member of the House of Commons. As a former member of this House, he may have some experience with respect to the House of Commons, but he's here, and he's a candidate for one of our four parties, the Liberal Party of Canada, and he's presenting—

Mr. Thierry St-Cyr: I'm a candidate.

Mr. Rick Dykstra: But you're not witnessing—

Hon. Jim Karygiannis: He was last time—

The Chair: No, no. Let him finish, Mr. Karygiannis.

Mr. Rick Dykstra: And now we have Mr. Telegdi, a candidate for the Liberal Party of Canada, here witnessing on behalf of I'm not sure whom, but I would like some clarification as to why a witness who is actually a candidate for a federal party is here on some sort of an expertise perspective, because I don't see how he could be. I certainly would like clarification as to how he made the witness list.

Hon. Jim Karygiannis: Mr. Chair, I believe that Mr. Telegdi is coming forward as an individual. What he is trying to do next year or next time is not relevant. He sat on this committee. He has relevant history. He was probably one of the longest-serving members, and if has something to present, what is the problem?

The Chair: We welcome almost everyone here, sir. You're welcome to the committee.

We have four groups.

We have Mr. Raphael Girard.

We have two people from the Fédération des femmes du Québec: Ms. Alexandra Pierre, community organizer responsible for anti-racism and discrimination issues, and Nathalie Ricard, who is with the same group.

We have the Coalition des familles homoparentales du Québec.

We have the Canadian Arab Federation, represented by James Kafieh, who is legal counsel.

By teleconference, all the way from Kitchener, we have the Honourable Andrew Telegdi, a former parliamentary secretary and former chair and vice-chair of this committee.

I'd like to welcome all of you. We will start by giving each of the groups up to seven minutes to make a presentation. The Fédération des femmes du Québec is a group, so that would mean a total of seven minutes for the two of you.

We'll start with Monsieur Girard.

● (1645)

Mr. Raphael Girard (As an Individual): Thank you, Mr. Chairman.

I'll try to get through this in as short a time as possible, but I warn you that my presentation is meaty and full of precise technical terms. I've given a copy of my text to the clerk so that the interpreters can follow.

Mr. Chairman and ladies and gentlemen, 25 years ago, I led the task force that produced the existing refugee determination system for Canada. It was the first time we embedded the right to claim refugee status in Canadian law.

I can also say I don't envy the people who are going through the reform. What strikes me most about the debate surrounding Bill C-11is how little the objectives and the problems have changed, despite more than 20 years of experience with the phenomenon of refugee claims in Canada.

Looking back to 1985, the Singh decision forced the department to change the ad hoc processes it had for dealing with refugee appeals against removal. The backlog created at that time was decades long. Reform was essential.

Flora MacDonald mandated me to form a task force, and I must say that the objectives we had then and the objectives for Bill C-11 today are virtually identical. Everyone wants a rapid and fair decision-making process, early recognition of valid claims, and prompt removal of failed claimants to discourage frivolous claims by those who would exploit the determination system for other purposes.

Despite our best efforts, the system we delivered in 1989 failed. It was dysfunctional from day one. There was a conflict between the design and the law.

The design concept was based on the premise, a very important premise, that an independent tribunal should be available to those, and only those, whom Canada would have an obligation to protect if they met the definition of “convention refugee”. We rejected the idea that Canada had an obligation to facilitate claims by those seeking to come to Canada from other signatory countries such as the United States, Germany, and other western European countries whose performance in protecting refugees showed them to be in good standing.

Although provisions to achieve this were present in the bill that became law in 1989, the essential restraints on access to the independent tribunal were not enacted by the government, and the system was therefore left vulnerable to overload, despite the enormous budget of $100 million that was made available to the IRB in its first year. To compound this issue, the IRB adopted an interpretation of the convention that was and remains broader than that used in any other signatory country, leading to an acceptance rate of claims that approached and sometimes exceeded 50%, which in those days was easily double that of the next most generous country.

Since then, the system has been chronically backlogged. As a result, there have been episodes of wholesale abuse by bogus claimants.

Bill C-11 has some interesting features to expedite the process and limit appeals, but it fails to come to grips with the underlying problems that plague the existing system. The bill replaces order in council nominees with public servants at the hearing of first instance, which will make the appointment process simpler; however, the hearing format with counsel remains the same.

An additional element has been tacked on at the front end, which you talked about earlier, and the *de novo* is available at the back end on appeal from a refusal at the hearing of first instance, which can include a second oral hearing in some cases where credibility is an issue.

These three steps replace the single encounter the claimant now has in the current system. The Bill C-11 reforms risk making the overall process more complex, not less.

It's difficult to believe that a more complex system can be faster despite the time guillotines that are intended to be imposed. I don't know of any tribunal that isn't backlogged and that values timeliness over integrity of process.

Currently, appeals against sponsored immigrant refusals made to the IRB take up to two years to be heard. Spousal cases in this group command the highest priority in the immigration firmament. And applicants don't seek delay. They want to come to Canada and be reunited with their families.

If two years is the best the IRB can do for high-priority people who don't seek delay, is it really realistic to think that the IRB can do better with a bigger and more complex challenge with regard to people for whom delay can be a positive feature that they in fact often seek?

● (1650)

The underlying problem with Bill C-11 is that everyone will have a right to a hearing before an independent decision-maker. This is neither necessary nor practical. Where there is no protection issue, there should be no involvement by the IRB.

Neither the charter nor the 1951 UN convention obliges us to hear claims of refugee status. The convention only obliges member states to refrain from *refoulement*, which is the forceable return of refugees to a country where they face persecution. Removing people from Canada without a hearing of a claim to refugee status does not contravene the convention nor the charter if it is done in a way that does not expose them to *refoulement*.

For example, Bill C-11 will allow the continuation of the absurdity of the current Canadian system, which has been abused wholesale by claimants from the Czech Republic and Hungary.

The Chair: You have one minute, sir.

Mr. Raphael Girard: There is no protection issue for citizens in the EU. They have the right of mobility among 27 developed countries and they have individual protections by the European Court of Human Rights.

So what do I recommend for Bill C-11?

First of all, we need to be more courageous in limiting access, starting with citizens of the EU.

Second, we need to make the interpretation of the convention used by the public servants who preside at a hearing of first instance more constructive and closer to that used by other countries.

Third, we need to enhance our efforts to sign safe third country agreements with other countries through which our refugee claim load currently passes. Otherwise, we'll continue this schizophrenic policy we now have, where we have the most open system in the world, but we also have a very active cadre of people in foreign airports interdicting passengers so they can't come here and use it.

The Chair: Thank you for your presentation, sir.

Mesdames Ricard and Pierre, you have up to seven minutes.

[*Translation*]

Ms. Alexandra Pierre (Community Organizer, Responsible for anti-racism and discrimination issues, Fédération des femmes du Québec): Good afternoon. Thank you for receiving us and allowing us to make this presentation.

The Fédération des femmes du Québec, la Coalition des familles homoparentales, the Concertation des luttes contre l'exploitation sexuelle, or CLES, the Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel, or RQCALACS, and the Table des groupes de femmes de Montréal all work to promote and defend women's interests and for the recognition of lesbian, gay, bisexual and transgender people, LGBT people.

We support the objective of a faster refugee determination system, to the extent that speed does not jeopardize refugees' fundamental rights, and we welcome the introduction of an appeal division under Bill C-11. Despite this progress, we wish to express our serious concern about the rest of the bill.

As a result of the proposed amendments, certain asylum applicants will not have access to the appeal division as a result of their nationality and origin. The introduction of the term “designated country” or “safe country” violates the fundamental principles of the UN Convention relating to the Status of Refugees and the Canadian Charter of Rights and Freedoms, which clearly establish the right to equality.

Domestic abuse, crimes of honour, genital mutilation, rape and commercial sexual exploitation are all forms of violence or persecution suffered almost exclusively by women. The women from countries that might be characterized as safe are not protected from these violations of their rights. In some countries, discrimination and mistreatment are open, even legal, whereas in others, they are more concealed.

I'm going to tell you about the case of a woman whom the signatory groups to this brief have supported. That woman from Honduras was detained in an apartment by a criminal gang that accused her friend of being a police informer. In that woman's presence, the friend in question was mutilated and then decapitated. The woman was subsequently raped by the members of the criminal gang. She then had to leave her husband behind and seek asylum in Canada. She said that, since the police was corrupt, she could not inform on those police officers because otherwise she would be dead.

At her IRB hearing, the panel found that, based on the national documentation binder, Honduras was a country that cracked down on criminal gangs and enforced laws against such crimes. In spite of everything, however, the government of Honduras is still incapable of eradicating this type of sexual violence, which is quite common.

● (1655)

Ms. Nathalie Ricard (Coalition des familles homoparentales du Québec, Fédération des femmes du Québec): Good afternoon.

Thank you for allowing me to speak and for listening to me.

With regard to gender violence, I'm going to continue and talk more specifically about sexual minorities. It must also be understood that, when a country decriminalizes homosexuality, that does not necessarily mean that its social and police policies will also protect sexual minorities.

A lot of gays are collectively violated, for example, their families blamed, hurt and dishonoured, and these people won't go to the police to file a police report because, once again, there will be victimization and often blackmail.

What is reported is a lot of blackmail, the rejection of families, scorn and sexual violence. The same is true of women. For example, we have women in our association right now who come for Mexico. These women, who may at first seem entirely heterosexual, are not; they are lesbian, and people think they are heterosexual because they have children.

So that also has to be taken into consideration; that is to say that there is no protection for same-sex couples or recognition of gay parentality or maternity in a number of countries. So one of the threats these people face, and one of the reasons why they do not reveal their homosexuality, is that they can lose custody of their children. That is why it has to be taken into consideration, and it is not because a country might be considered safe—one could think of Mexico, for example—that there is any security for sexual minorities, and especially for women.

I've been working with immigrants and refugees for 20 years, and you may be certain that, when women appear before you, they definitely have a history of sexual violence that will take a lot of time and a number of meetings before it is ultimately revealed. In addition, the time frames currently granted under the bill are too short to enable a person to really prepare testimony that is meaningful and that reveals her situation.

Ms. Alexandra Pierre: Another problem with the bill is that women and LGBT people—we're going to call them that—from so-called safe countries also face prejudices before the board to the extent that their country is considered safe.

For us, this situation is unacceptable, and we repeat that refugee status must be based on a rigorous assessment of the person's individual situation rather than a general assessment of the country that person comes from. Subclause 11(2) of the bill would also require an interview within eight days after the asylum claim is filed and a hearing within 60 days.

To be able to testify and confide without fear for their safety or that of their family, claimants need to know the people who hear them, but also to know the system in which they have landed, their rights, the laws and the implementation of those laws.

In the case of sexual violence or of violence suffered as a result of sexual orientation or gender identity, a state of post-traumatic shock or shame may prevent people from speaking freely to their lawyers or to other key people in the asylum process. From that perspective, we consider a hearing within 60 days absolutely unrealistic.

We also feel that two months are much too short a time frame not only to gather together relevant documents to support an asylum claim, but also to find—

● (1700)

[*English*]

The Chair: Ms. Pierre, you have less than a minute to go.

[*Translation*]

Ms. Alexandra Pierre: —someone who can represent the person.

We are also extremely troubled about the distinction the government draws between true refugees and false refugees. True refugees are apparently those who are sponsored and selected overseas and the false ones are apparently people who seek asylum at the border. In our view, both types of asylum claims are extremely legitimate and attention must be paid to this type of remark which can fuel xenophobia.

[*English*]

The Chair: Perhaps you could wind up.

[*Translation*]

Ms. Alexandra Pierre: In conclusion, I would just like to tell you our recommendations. There are four of them.

We would like the reference to the interview and the bill to be deleted, along with the provisions on the designated countries of origin and the amendments prohibiting asylum claimants from filing humanitarian applications. You can see the details in our fuller brief that you will be receiving. Lastly, we would also like board members to be appointed and to be qualified candidates who could come from the public service or outside the public service.

[*English*]

The Chair: Thank you.

Mr. Kafieh.

Mr. James Kafieh (Legal Counsel, Canadian Arab Federation): My name is James Kafieh. I'm legal counsel for the Canadian Arab Federation.

The Chair: Thank you for coming, sir.

Mr. James Kafieh: The Canadian Arab Federation is the national organization serving Arab Canadians. Since 1967, we've advocated on a wide range of topics. However, our 500,000 Arab Canadians have a special interest in Bill C-11.

We come from a part of the world that is generating a lot of refugees and we have a special interest in this legislation. There are six areas that I want to touch on with regard to the specific concerns we have about Bill C-11.

We would point out that not all aspects of the proposed changes are negative. For example, the Canadian Arab Federation applauds the inclusion of provisions for appeals on the basis of merit and also more timely hearings for refugees.

However, there are also very disturbing changes embedded in the legislation. As the lives of refugees are at stake, these aspects require special attention today.

Of the six points to touch on, the first is with regard to the interview at the Immigration and Refugee Board. A fair and expeditious process for assessing the refugee claimants is a common goal; however, “fair” and “expeditious” are not alternative choices.

The requirement for refugee claimants to give details of their claim at an information gathering interview within eight days of a claim being referred to the Immigration and Refugee Board is insufficient and prejudicial to legitimate claimants.

Refugees undergo traumatic and gruelling processes to arrive in Canada. They will understandably require more time than is contemplated in the legislation just to recover from their odyssey. In addition, they legitimately need to consult legal counsel prior to presenting their narrative. Legal aid certificates often require longer than the eight-day period allotted just to be issued.

The initial interview requirement undermines due process, so we say that the initial interview should be deleted from the legislation.

The second point is with regard to the hearing date scheduling. The present scheduling of hearings is profoundly problematic. Refugee claimants should not have to wait years to have their claim adjudicated; however, many refugees will necessarily require more than the 60 days allotted under the legislated to prepare their case.

Evidence of persecution may be difficult to obtain from dysfunctional parts of the world. States that generate larger numbers of refugees are often the very states that are most oppressive and chaotic. In addition, even evidence gathered in Canada, such as medical or psychological assessments and reports, may take much longer to be produced than the 60 days being contemplated in the legislation.

The right to an expeditious hearing should be clearly stated in the legislation. However, hearings should generally be scheduled on the basis of when they are ready to proceed, with long-term time limits setting out maximum time limits.

The third item is with regard to the first instance decision-makers. The move away from an Immigration and Refugee Board that is uploaded with political appointees is a welcome measure; however, limiting the decision-makers of first instance to civil servants will undermine the objectivity of the refugee process. A process that handles appointments to the Immigration and Refugee Board without political interference or partisan consideration would be a welcome measure. Decision-makers should be appointed for fixed terms and qualified candidates, both from inside and from outside the civil service, should be considered for this role.

Number four is with regard to designated countries of origin. Provisions under the legislation that would enable the minister to designate countries of origin would unnecessarily politicize and undermine the integrity of the refugee determination process. Such determinations also violate international law by discriminating on the basis of country of origin.

● (1705)

The Chair: Sir, I'm sorry to interrupt you. This is being translated into French, and you're going a bit too fast.

Mr. James Kafieh: I will try to slow it down a little bit. I was conscious of the time limits.

The Chair: Talk like I do. People say I talk too slowly.

Voices: Oh, oh!

Mr. James Kafieh: I will slow it down a little bit.

The Chair: Thank you, sir.

Mr. James Kafieh: Such determinations also violate international law by discriminating on the basis of country of origin.

In addition, they carry with them the real spectre of endangering legitimate refugees by leaving undefined the terms of “safe countries of origin” and “safe” itself . Indeed, the criteria on which a country of origin could be listed as safe by the minister are non-existent. We understood from the earlier witnesses that this might be something to be defined very shortly through the regulations, but it is still not available to us at present.

Ultimately, the provision establishes a two-tiered refugee determination process. The designated countries of origin provision should be deleted from the legislation.

Fifth, the establishment of a refugee appeal division is a welcome measure. A genuine appeal process that allows for the inclusion of new evidence is long overdue. Indeed, the primary concern lies in the definition of “new” evidence. Historically, evidence that could be added to the record has been limited to “evidence not reasonably available” at the time of the hearing or initial adjudication.

This can be remedied by generalizing the concept of what new evidence can be added to the record on appeal. To achieve this objective, the legislation should be changed to make clear that all relevant additional evidence may be presented by a refugee claimant at an appeal.

Sixth, the barring of anyone from a pre-removal risk assessment unnecessarily creates a risk to refugee claimants. The Immigration and Refugee Board—not the office of the minister—is the correct venue for determinations as to whether or not a person can be removed without risk.

The legislation does not contemplate changing circumstances that could legitimately raise new issues of risk beyond those that existed at the time of initial adjudication. The pre-removal risk assessment restrictions should be removed and authority for administration of this provision should be placed under the jurisdiction of the Immigration and Refugee Board.

I should say finally, regarding the humanitarian and compassionate applications, that definitions of who is a refugee are narrowly defined and restricted in international and domestic law. Refugee claimant cases and situations are usually complex. There is often no simple way to compartmentalize legitimate refugees from persons who may also have legitimate cases that raise genuine humanitarian and compassionate considerations.

For example, a legitimate refugee claimant case may also independently raise issues of what is in the best interests of a child. Such a consideration would not be relevant to a refugee adjudication, but would be central to a humanitarian and compassionate application.

The arbitrary barring of refugee claimants from also accessing the humanitarian and compassionate application process will undermine Canadian values and law. The provisions in the legislation that bar access to humanitarian and compassionate applications for refugee claimants should be deleted and the administration of these applications should be placed under the jurisdiction of the Immigration and Refugee Board.

Subject to your questions, that is the formal submission of the Canadian Arab Federation.

The Chair: Thank you very much, sir, for an excellent presentation.

Our final witness is Mr. Andrew Telegdi, a former chair of this committee.

It must be strange coming back, sir, to address the committee in this way. I hope I am meeting the high standards you have set...? That's a terrible question to ask and you don't have to answer it.

Welcome to the committee, sir.

Hon. Andrew Telegdi (Former Parliamentary Secretary, Former Chair and Vice-Chair of the Standing Committee on Citizenship and Immigration, As an Individual): Thank you very much, Mr. Chair. I'm very pleased to be here.

Let me say that some things don't change. I used to have all sorts of problems with the parliamentary secretary when I chaired the committee, but we worked it out.

First and foremost, I think it's important for committee members to know that I'm a refugee from the class of '57 following the Hungarian revolution and was one of approximately 40,000 people who got asylum in Canada after the uprising. So this is an issue that is close to my heart.

When I dealt with issues related to immigration and citizenship, I always operated in a pretty non-partisan fashion. I disagreed with my government at one point and I resigned as parliamentary secretary. I served as an associate member of the committee for a number of years because I would not be put back on as a member. Then, when the situation changed, I got elected as chair and, subsequently, vice-chair.

It is an issue that I'm very much interested in. As I said, when I was chair of the committee, I challenged the committee members to operate in a non-partisan fashion and I defended the committee decisions to government and advocated for them.

Looking at the changes, I'm really glad that Mr. Girard is here because he talks about coming back 25 years after he helped draft the original IRB system and about identifying many problems.

Mr. Chair and members of committee, I hope you are not going to be coming back after 25 years have gone by and having somebody else come back and say that the problems haven't been solved.

One of the things that concerns me most about Bill C-11 is the proposed timeline. I hear you talking about going to clause-by-clause and that causes me a great deal of concern, because I think issues such as Bill C-11 and its implications should be very transparent, and input should be sought. I can't understand why you as a committee would not want to take your time to make sure you get it right, because we don't want to have Mr. Girard's experience repeated.

In terms of the bill itself, I just want to give you one example of a case I dealt with when I was parliamentary secretary. It was the case of a young woman from the former state of Yugoslavia who felt that her refugee claim was turned down because the board member of the IRB did not believe there was collusion among the government, the media, and the police in the former state of Yugoslavia.

She was set for deportation and was going to be sent out of the country—this was back in 2000—on a Monday afternoon. She was going to arrive in Belgrade at 10 the next morning and NATO was scheduled to start bombing at noon. How ridiculous a situation can you have? Certainly, incompetence of board members existed at the time, and changes have been made to ensure greater competence.

Another issue I'm very cognizant of is the fact that we fought to get the board appointment process right. Back in 2006, we had a backlog of 20,000 claimants, and now the backlog is over 60,000 claimants. What happened was that the vacancies on the board were not filled up in a timely fashion, which resulted in growth in the backlog. In a lot of ways, we had solved much of the problem by getting the backlog down to 20,000, and it was going to go down further.

● (1710)

Also, the changes to the system mandated that we have a refugee appeal division, and that was not put in place. But it was on the verge of being put in place once the backlog got down to 20,000.

My recommendation to those of you on the committee—and I make this as an individual and I make it in a very non-partisan fashion—is to take the time to get this right. Make sure that the stakeholders and Canadians have a genuine opportunity to have input into this legislation, because I think it's legislation that Canada, in its past history, can be very proud of.

We want to make sure of that going forward. The fine aims of the legislation, such as speeding up the system, are laudable, because the quicker we can bring certainty to an individual, the better off we all are, including the individual.

● (1715)

The Chair: Sir, you have less than one minute.

Thank you.

Hon. Andrew Telegdi: Also, increasing the number of refugees from overseas is a very positive step.

Mr. Chair, I urge you, with all my experience in terms of the committee itself, to take the time to make sure the legislation you come up with is going to stand the test of time so that we don't have somebody coming back 25 years from now and saying it's as bad now as it was then. Mind you, I think there have been great improvements made over the years.

Thank you.

The Chair: Thank you, sir, for your presentation.

I'm going to suggest that each caucus have up to five minutes.

Mr. Karygiannis.

Hon. Jim Karygiannis: Thank you, Chair.

Mr. Kafieh, can you tell us in a few words if your organization is supporting safe third countries of origin, and if not, why not, vis-à-vis the Middle East, the Arab countries?

Mr. James Kafieh: Well, quite frankly, we believe that the designation will be politicized. We've seen examples of that with the present government, where the preferences or the prejudices of the government of the day have a profound impact on such designations.

So ultimately, people will fall victim to the prejudices of the country of origin. One example, certainly, is the State of Israel itself, which the government has a very close relationship with and views in high regard, in spite of the overwhelming evidence that there are profound human rights issues relating to that particular state and its treatment of its own citizens who are not Jewish or certainly those who are living in the occupied territories.

So that's one example, but it's a profound one, and it shouldn't be just limited... This isn't simply about the Arab-Canadian community. This is something that we expect and suspect, based on past experience, will be propagated to other areas of the world, where there will be some special relationship between the government of the day in Canada and that country and as a result there will be political consideration in terms of that kind of a designation as to who will get that kind of a pass and who will not get that pass.

Hon. Jim Karygiannis: Thank you.

Mr. Girard, it's a pleasure to see you after so many years. In 1991-92, or perhaps a little before that—I believe it was 1989-90—you had the first crack at the time at trying to put this thing into its proper place. What did you do wrong then, sir, that we're trying to right now?

Mr. Raphael Girard: Well, we gave the government a combination of restraints and sweeteners. They took the sweeteners and discarded the constraints.

Hon. Jim Karygiannis: Was a constraint a—

Mr. Raphael Girard: They were safe third and the first level of the system that sorted out the "manifestly unfounded". They set the definition of "manifestly unfounded" so low that it became inoperative.

Hon. Jim Karygiannis: Sorry, but did you say that was an option that you gave the government—a Conservative government—at the time?

Mr. Raphael Girard: Yes, and they enacted it in law, but they put in place the first level to sort out the manifestly unfounded claims before they proceeded to the board. Then they did not enact the safe third country list. It took 10 years for them to start that with the United States. We gave it to them in 1989; they did it in 1999.

Hon. Jim Karygiannis: So this was a wish of the bureaucrats at the time?

Mr. Raphael Girard: It was the recommendation of the professionals, yes.

Hon. Jim Karygiannis: Okay, and certainly the governments of the day have not adhered to it for the last 20 years. So I guess it's the second time around that the "professionals"—quote, unquote—are coming back at it.

Mr. Raphael Girard: I don't hear them recommending it at this time. They're recommending a variation, which is safe country, which we did not. The safe country issue, when we discussed it in 1989, five years after the charter came into effect, was an issue that the Department of Justice preferred we did not address. They didn't think it was charter-proof. Now, we've had more experience since then, but—

● (1720)

Hon. Jim Karygiannis: Do you think it will be charter-proof now?

Mr. Raphael Girard: Well, I'm not a lawyer, but as I say, things have evolved over 20 years.

Hon. Jim Karygiannis: But you are, sir, an individual who has spent a lot of time on immigration. Do you feel now that this is charter-proof?

Mr. Raphael Girard: Probably not, unless we're very careful about the way we do it. The easier and legally tested way to do it is simply to exclude a group of countries like the EU from making claims based on the fact there are other remedies available to every EU citizen. They don't have to come here to get protection.

Hon. Jim Karygiannis: Are all countries in the EU countries of safe origin?

Mr. Raphael Girard: Well, everybody within the EU has a totally unfettered right of mobility within the EU, and they all have individual access to the European Court of Human Rights. The issue of the convention is about protecting people. The Europeans are protected in Europe; they don't have to come here.

The Chair: Thank you.

Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Ms. Pierre, Ms. Ricard, you work with women who come from overseas and claim refugee status in Canada. You've told us a true story. You are here to support and help these women. You fight for them and you defend them. They can trust in you.

Despite that trust, can some women take more than a week or eight days to tell you their story, to tell what really happened in their country of origin?

Ms. Alexandra Pierre: Some of the groups with which we prepared the brief, including RQCALACS and CLES, work with women seeking asylum. As I said earlier, these women often seek asylum for reasons related to gender violence such as rape, spousal abuse and so on. Obviously, when they arrive, it is impossible for them to understand in one week the legal system in which they find themselves. Furthermore, as I said earlier, they can't understand how it works. In a number of countries, there is a gap between the law and the manner in which it is enforced.

A little earlier you talked about a one-week time frame, which corresponds to eight days from the first hearing. Obviously, for us, that's absolutely not enough to create a climate of trust, to gather a certain amount of evidence and especially to manage to have these women open up to us and to talk to us.

Mr. Thierry St-Cyr: Even beyond the legal aspect and knowledge of the system, it must be quite difficult, in some cases, to simply arrive and trust another human being enough to tell that person your story. If in addition that other human being is an official associated with the authorities, with the government, and you come from a country where you've been persecuted, that seems to be even more difficult.

The government is putting forward these provisions, the interview and the time period before the interview, among others. Running through this we clearly see the idea that some people lie and that these provisions will leave them less time to make up a story. They're going to be asked to tell their story orally rather than on paper. They'll be able to ask them questions.

Isn't it instead the reverse that could well occur? Those who simply make up stories may perhaps do better in this system, whereas the most traumatized individuals could well have more trouble dealing with it.

Ms. Nathalie Ricard: There are a number of reasons why it may be difficult to describe these experiences of abuse. You were asking how much time it could take, and it's very random.

Yesterday I had a meeting with representatives of the Mouvement contre le viol et l'inceste, and they said that, taking into account all the meeting time frames, it took at least three interviews, and that's in the case of a woman who meets another woman in an organization specialized in specific sexual violence cases. So if you consider the matter in a broader context regarding other issues, as I do, and I work in community health, it can take more than a month, even six months.

Sometimes the person won't reveal the situation because she has suffered incest at the hands of her father or because these people are very close or perhaps because they are linked to a political class in their country. Consequently, talking about sexual violence will also hurt the people who have stayed behind in their country.

It must be understood that this isn't about giving false testimony. It's about understanding that rape is unacceptable here, that it's criminal, that you can talk about it and that there are rights. It can take a little time for people to simply get that information into their cultural frame of reference, to think that it's possible that there might be justice in these matters. Then they can assert themselves and say they need this safety because, if they go back to their country, they will lose too much, it will be terrible and they will die. There are a lot of decisions to make, deadlines that must be met and ethical issues that must be considered.

So it's not about lying and circumventing the system, but rather about establishing your own cultural frame of reference and also fitting it to theirs.

Often, when a woman does not speak to us or look us in the eye, one may believe she is trying to conceal facts. However, it may be an offence for a woman to look a man directly in the eye, all the more so if it's to tell him what has happened to her. You have to be very sensitive to the various situations that people experience.

You're right. Some people who would like to slip through the system will take advantage of the situation, whereas others who are traumatized will be left out.

● (1725)

[*English*]

The Chair: Thank you.

Ms. Chow.

Ms. Olivia Chow: I have a question for Ms. Alexandra Pierre and Ms. Nathalie Ricard. Probably both of you can tell from the questions by the Bloc and the NDP that we are very much opposed to giving a safe country designation to Guyana, for example, although it is on England's safe country list, because it's illegal in Guyana to be gay or lesbian or bisexual.

However, both the Conservative and the Liberal parties, especially the Liberals—which is surprising—seem to have no problem with having this designation. Once designated, anyone from that safe country would not have the right to appeal, which you've said is really a problem.

The Chair: Stop the clock, please.

Monsieur Coderre has a point of order.

[*Translation*]

Hon. Denis Coderre: Without wanting to offend you, Ms. Chow, I would like you to speak on behalf of your party and not to put words in the mouth of the Liberal Party of Canada.

All day I've asked questions reflecting opposition to designated countries.

[*English*]

The Chair: Thank you.

Ms. Olivia Chow: Fine. I'm just repeating what your critic said at the last meeting. I'm using his own words, actually.

The Chair: I started the clock again, so carry on.

Ms. Olivia Chow: I'm not sure that's a point of order.

However, I was just repeating what the immigration critic of the Liberal Party of Canada said last Tuesday, only two days ago, that he had no difficulty with designating safe countries. I hope I'm wrong, but that's what I heard. I've heard it several times since this bill came out.

I know that you're based in Quebec. Have you had conversations with some of the members of Parliament other than Mr. Mulcair or those from the Bloc? Have you had conversations with other MPs that give you comfort that perhaps some of them might change their minds?

Because, you know, next Monday will be the last session for hearings. Then, by Tuesday afternoon, we will be going to clause-by-clause consideration of the bill, which is being rushed through. Then, before midnight on Thursday, June 3, this bill will finish at this committee and go to the House of Commons the week after, probably landing in the House by Monday or Tuesday, where there will be final debates and approval or non-approval.

So it is being pushed through. There are many clauses in here and you will notice that because of the rush we have not even had time to put together some amendments, but that seems to be what has been put together, unfortunately. Have you had many conversations with other members of Parliament?

[*Translation*]

Ms. Alexandra Pierre: We haven't had the opportunity to have any conversations with members of Parliament. However, the Fédération des femmes du Québec is an association, and a number of its members, groups and individuals, have expressed their concerns to the various local MPs and also to the members who sit on this standing committee.

● (1730)

[*English*]

Ms. Olivia Chow: Nathalie, do you have the same response?

[*Translation*]

Ms. Nathalie Ricard: Yes, it's the same thing. Our organization hasn't spoken directly to members of Parliament, but it should be recalled that the Fédération des femmes du Québec has more than 175 associated members also including members of Parliament. There are people who are very engaged politically and 600 individual members. It is a very large federation with a lot of members. The message we are getting from everyone is that this idea of designated countries is not welcome.

[*English*]

Ms. Olivia Chow: Would the members of the organizations your coalition represents also understand that they perhaps need to quite quickly connect with their local members of Parliament, their *députés*? Because there really isn't a whole lot of time for minds to be changed, especially on this whole notion of humanitarian and compassionate considerations and safe country designation?

You are nodding. You understand that?

[*Translation*]

Ms. Alexandra Pierre: A campaign is underway.

Ms. Nathalie Ricard: A mobilization campaign is already underway.

[*English*]

Ms. Olivia Chow: Okay.

The Chair: Thank you. I think that's it, Ms. Chow. I'm sorry.

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

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

Mr. Girard, I want to thank you for being here today. It's great for us to have an opportunity to talk to a former director of the refugee policy division.

Refugee protection in Canada has traditionally reflected our country's humanitarian tradition and compassion for vulnerable people. Do you believe that the Balanced Refugee Reform Act is sufficiently balanced and continues to reflect that compassion?

Mr. Raphael Girard: My quick reading of it and the following of the debate suggests to me that it is vulnerable. There are some interesting innovations that are good and that we didn't think of when we did the reform from 1985 through 1988, but as I say, it is entirely too open to people who have no protection issue to have adjudicated. We've been overrun by Portuguese. We've been overrun by Czechs. We've been overrun by Hungarians. There are no protection issues in these cases.

Mr. Terence Young: Thank you.

What is your position on the proposed safe country of origin policy? Let me just amplify that a little. Do you consider this an important tool, and a potentially effective tool, for addressing the spikes in the claims from countries where, for the most part, the claims end up being determined to be unfounded?

Mr. Raphael Girard: The more effective way would simply be to exclude those people from making a claim rather than trying to rush them through the board and limit them on appeal, because their countries are safe. You have a clear argument that those people are already protected; I'm talking in the European Union context.

Going outside Europe becomes very questionable, because I can imagine that the IRB statistics on adjudication of claims from virtually any country are over 50%.

Mr. Terence Young: Can you see this being an effective tool? It's not your first choice, but can you see it being effective?

Mr. Raphael Girard: Well, it's an essential feature to keep the load away from the appeal division.

Mr. Terence Young: Thank you.

A huge amount of resources, Canadian resources, is used up with appeal after appeal based on false claims, etc. Those resources could perhaps be used to bring here refugees from other countries who are sitting in camps under some very terrible conditions.

You're on the public record for advocating a refugee protection system that distinguishes between bona fide refugees and false claims. I had a quote written down for you: in some cases, they "seek to remain by any means". Do you think the proposed reforms will work in the public interest of granting asylum protection to those who need it most and deter abuse of the system for those who don't need it?

Mr. Raphael Girard: It will certainly, in its current form, unamended, provide protection, but there is very little deterrent that's evident. It may happen. The people who would abuse the system may believe the rhetoric and hold back, but there are no teeth in the system to ensure they do.

Putting in time constraints to move those cases along fast is wishful thinking. The record of the department is abysmal. Right now, routine business with this department takes a long time. A routine work permit renewal takes 55 working days. The transaction takes 10 minutes.

● (1735)

Mr. Terence Young: Mr. Kafieh, I assume you know about the problems we've had with the system and delays that go up to nine years in some cases, with repeated appeals and the costs associated with that. You know that both the official opposition and the government party have recognized the considerable need for change. In fact, virtually every editorial board in Canada has agreed that the system needs to be reformed.

Outside of the RAD, it sounds to me like you're recommending to keep the system the way it is, with status quo. Don't you have any concerns about all the problems in the system and the fact that refugees in camps all over the world are left there because our resources are being used on false claims?

Mr. James Kafieh: I think there are things that we've spoken about that would call for changes. For example, on the way the initial determination body is selected, the process should be depoliticized. We have a process of appointments that takes a long time and to fill vacancies takes longer than necessary—

Mr. Terence Young: Do you know that the act proposes that those people be civil servants?

Mr. James Kafieh: Yes—

Mr. Terence Young: And specially trained, etc., so it would be depoliticized.

Mr. James Kafieh: Yes, but I'm not defending the existing system. This is the point you've made. I just want to clarify that we think the Immigration and Refugee Board's jurisdiction can be expanded modestly to deal with humanitarian and compassionate grounds and also with pre-removal risk assessment, which is something that could also be objectively handled at that level.

We don't support a process that's being suggested whereby people at the Immigration and Refugee Board essentially would be civil servants, a pure body of civil servants at the Immigration and Refugee Board. We think this would fetter the independence of the body and that it would be better if they were appointed for a fixed term through a non-political process based on competence.

The Chair: Thank you.

I'm sorry, but your time is up, Mr. Young.

The time for all of you has come to an end.

On behalf of the committee, I thank you, Mr. Telegdi, Mr. Kafieh, Madame Ricard, Madame Pierre, and Mr. Girard, for your contribution and for coming here.

This meeting is adjourned until six o'clock.

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