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Chair

Mr. David Tilson

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● (1810)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good evening. This is the Standing Committee on Citizenship and Immigration, meeting number 21, Monday, May 31, 2010. This is a three-hour session.

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

I'm sorry for the delay, ladies and gentlemen.

We have three groups of witnesses. The first group is the Centre justice et foi, Elisabeth Garant and Louise Dionne. Welcome, ladies, to the committee. Thank you for coming.

We have the Canadian Association of Professional Immigration Consultants, Philip Mooney, the past president, and Timothy Morson, director of policy and certified Canadian immigration consultant.

By teleconference from Washington, we have a lawyer by the name of Howard Anglin. Mr. Anglin, this isn't televised; it's via telephone. As you can hear, we're having technical difficulties and we hope we can pull this off with you.

Mr. Howard Anglin (Lawyer, As an Individual): I hope so too.

The Chair: We'll do our best.

Each group will have up to five minutes to make a presentation to the committee. We'll start with either Ms. Garant or Ms. Dionne.

Welcome again, ladies.

Mr. Terence Young (Oakville, CPC): Mr. Chair, on a point of order, is it a verbal presentation or do we have a written copy as well?

The Chair: If you don't have it in front of you, it's oral.

[*Translation*]

Ms. Elisabeth Garant (Director, Centre justice et foi): We will basing ourselves on the brief that you received. We will be providing you with only the main excerpts from it.

Thank you for receiving us here, this evening. I would simply point out that the Centre justice et foi is a social analysis centre that is part of the Society of Jesus, better known as the Jesuit religious community. The centre's objective is to participate in building a society based on justice by promoting active citizenship for all, and particularly we encourage the establishment of a welcoming society for newcomers.

Since 1985, through the Vivre ensemble sector under the responsibility of Louise Dionne, we have been working on issues pertaining to immigration, refugee protection and the reception and integration of newcomers.

Before discussing the details of Bill C-11, which my colleague will be dealing with, I would simply like to point out some general aspects pertaining to the context of this bill. First of all, over the past few decades, we have seen awareness and respect for rights and democracy gain significant ground, making it increasingly more intolerable to accept situations in the world where these conditions do not exist.

Hence we have seen the types of persecution defined by the Geneva Convention applying to more and more individuals, groups and regions throughout the world and an increasing number of individuals are forced to apply for asylum. This situation will not change in the years to come. Regardless of how we try to restrict, monitor or turn away people requiring protection, they will find other ways of coming. It is absolutely essential that we have a bill, a reform, an immigration act, and in particular, refugee protection, that are able to meet our challenges.

I would like to point out that this trend that we see in the bill is a repetition of many aspects and realities that we see in other North American and European countries, at least in the northern hemisphere. Well ahead of us, these countries implemented certain measures such as their visa policies, accelerated asylum review procedures, sanctions against carriers and other measures.

Now that these measures have been introduced, particularly the measure pertaining to the accelerated asylum application review procedure, which this bill deals with specifically, it seems to me that we have to look at the experience in other countries. We are already able to see that the measures covered by the bill are not effective, that illegal migration is increasing and has not been decreased by such measures. We have especially noticed that these measures have been particularly negative for human rights. The fact that Canada has based itself on these models, which have not proven to be effective, is extremely worrisome and questionable.

In the few minutes remaining, I would like to allow my colleague to present the more specific aspects of the bill.

Ms. Louise Dionne (Centre justice et foi): Good evening.

We have proposed six recommendations that pertain to four areas of concern in the bill. Our concerns pertain to the following areas: unequal treatment based on origin, access to fair and equitable procedures that take into account the difficulties encountered by refugee claimants, and access to humanitarian and compassionate applications.

The bill provides for the creation of a list of "safe countries of origin". Nationals of these countries will have no right to appeal a negative decision by the Refugee Protection Division.

Implementation of this policy is particularly problematic, as the concept of "safe third country" leads to different treatment of the refugee protection claim based on the claimant's geographic origin. That is contrary to Article 3 of the Geneva Convention, which requires that states parties not discriminate on the basis of race, religion or country of origin.

In fact, the British courts have condemned decisions made by the government because of violations of the principle of non-refoulement, the right to family life or privacy. They have further stated that the Home Secretary could not rely on the mere fact that the third party has signed the Geneva Convention as a basis for finding it safe: he must make sure that the country is acting in good faith and compliance with its international obligations.

Given the time, I will cut my presentation short. My first recommendation is that clause 109.1, which pertains to designated countries of origin, be removed from the bill.

I wish to raise another point. The bill provides that the first interview is to be conducted by public servants. Under subclause 169.1(2) in the bill, the members of the Refugee Protection Division are appointed under the Public Service Employment Act. Again, this is an amendment modelled on the British system, where immigration officers conduct the initial interview, which is a crucial stage at which claims are screened. These officials do not meet the requirements of independence and impartiality, and this is a source of concern in view of the government's political objectives. In the United Kingdom, some observers have expressed their concerns regarding the qualifications and training of these officers and the broad powers they are given.

This is why we are recommending that subclause 169.1(2) in the bill be replaced with a new subclause that will provide that the members of the Refugee Protection Division are appointed by the chair of the IRB from a pool of highly-qualified candidates, based on the recommendations of a selection committee and in accordance with the criteria provided in the act. We are recommending that it also be specified that the members may be public servants.

● (1815)

[*English*]

The Chair: You're now almost a minute over. Could you wind up, please?

[*Translation*]

Ms. Louise Dionne: Have I gone over my time?

[*English*]

The Chair: Well, you're getting close.

[*Translation*]

Ms. Louise Dionne: Can I simply state the recommendations?

[*English*]

The Chair: Sure.

[*Translation*]

Ms. Louise Dionne: We have another recommendation to remove references to the conduct of an interview in a clause, that pertains to the timelines. Another recommendation asks that no reference be made in the regulations relating to deadlines for the conduct of an interview or the holding of a hearing. We are also seeking the removal of clause 24(4) in the bill relating to applications on humanitarian and compassionate grounds. Finally, we request that the bill be amended so that the minister can review applications even if the claimants do not have the means to pay.

That is all and I apologize for going over my time.

Thank you for giving me a bit of time.

[*English*]

The Chair: Thank you for your contribution.

Mr. Mooney and Mr. Morson, you have up to five minutes to make a presentation.

Mr. Philip Mooney (Past President, Canadian Association of Professional Immigration Consultants): Thank you very much, Mr. Chair, committee members, ladies and gentlemen. We have a submission that is on the way and I'll be reading excerpts from that submission.

CAPIC welcomes the opportunity to appear before this committee. We'd like to offer you some different perspectives and workable ideas. Our submission is based on recent interviews with refugee claimants, both current claimants and successful claimants. The existing refugee system is in need of fixing, and Bill C-11 contains both administrative and program fixes. It is to be praised for some new thinking.

We'd like to extend that new thinking. We will focus on three key elements. First, what factors influence an applicant's decision to make a refugee claim in Canada? Second, how can the new process be improved to better protect those who need sanctuary? Third, what elements must be retained to better program integrity?

First, many claimants learn about the refugee option from friends and relatives who are already here or from their communities outside their home country, most commonly in the United States. For example, there is a Creole radio station in Florida that refers individuals to an 800 number where they get such advice.

Second, many claimants come to the border after believing stories they hear from unscrupulous immigration facilitators. For example, we've included in our brief copies of ads run in Mexico by a ghost agent working out of Montreal, who offers to tell applicants exactly how to claim refugee status in Canada for $150, so they can then work here for several years.

Third, some refugees pay human traffickers for false documents and transportation assistance to avoid legal detection until they reach the Canadian border. We know of a consultant who sells maps to the Colombian community in the United States, showing them how best to avoid border inspections.

However, no matter how refugee claimants may choose to come to Canada, one thing is common to them all: rarely are intended claimants given a full and complete picture of the refugee process or other options to enter Canada legally. They are making risky, sometimes life-changing decisions based on incomplete, if not utterly false, information.

The government's initiative to offer failed claimants resettlement assistance abroad is a good one. This is an example of new thinking, but we believe it could also be improved. It's our members' experience that many who claim refugee status would not do so if they had a full explanation of what the process entails or if they found they could qualify to work and live in Canada under another immigration program.

To help refugee claimants make an informed choice, we recommend that they be given the opportunity to have all their options explained to them very early in the process. We believe the eight-day interview mechanism should be changed to thirty days to allow time for individuals, after entering at a port of entry or after indicating once in Canada that they want to file a claim, to consult an authorized third party who would help them understand other immigration options, including applying outside Canada in some other category, and fully understand the quality of their refugee claim.

When it comes to unscrupulous agents, this committee recommended changes two years ago to the regulations, which would have closed loopholes that permit said agents to operate. This committee also recommended that the body charged with regulating immigration consultants be wound down, reconstituted, and given more powers to prosecute those who would pervert the system, which would include the so-called bottom feeders who induce people to take enormous risks in travelling to Canada, often illegally, and in making false refugee claims. This committee repeated those recommendations last year.

We have heard that the government is moving at last to implement the recommendations of this committee, and we support that initiative wholeheartedly. This would help reduce the number of false claims. But we would like the committee to note that it is not a problem restricted to immigration consultants, regulated or unregulated. In fact, we believe that many more refugee cases are filed by lawyers than by consultants.

With regard to filing false claims, in some cases claimants cooperate willingly with unethical agents, paying for false documents and for preparation of claims that are without merit. The biggest deterrent to doing this would be a fast and efficient process that would return them to their home country before they had a chance to recoup their expenses. This then would send a message to that community that any money spent would be wasted, and they would move on to easier pickings.

For those who set out to break the law in Canada, mechanisms already exist to bring these individuals to justice. However, when it comes to immigration it's often unclear to the general public who they should call. Is it the RCMP, the local police, CBSA? What we need is a single hotline where individuals can anonymously report cases of immigration fraud or related criminal activity.

Many of our members report having received such calls from individuals who come from countries where the rule of law is compromised or even non-existent. It is heartening to see that they have already learned the value of participatory justice in Canada, but even more heartbreaking to see that little or nothing is done with their information.

● (1820)

With respect to the safe country of origin, designating certain countries as safe can reduce the number of false claims. However, our suggestion is that you incorporate into the concept that there are populations within any country, no matter how free or democratic, who are at risk of persecution. This list of populations at risk could be worked out with stakeholders and updated frequently.

The Chair: Excuse me, sir. You're over your time. If you could wind up, we'd appreciate it.

Mr. Philip Mooney: Okay. I would like to make a point on PRRA, the pre-removal risk assessment.

It's important to remember why we have PRRAs in the first place. Canada will not remove individuals to countries where they face a real risk of death or injury. That's the reason for PRRA. Therefore, PRRAs should be available to all failed claimants regardless of their country of origin. The PRRA process is relatively quick, and it will not add significantly to the timeline.

We are also in favour of the idea of having the ability to introduce new evidence at any stage throughout the application and the process.

Thank you, sir.

The Chair: Thank you, Mr. Mooney.

We now have Mr. Howard Anglin, a lawyer who is speaking from Washington.

Mr. Anglin, normally we have a video conference, but there are technical problems so it's a teleconference. I'm told the television audience will see your picture, but we will not. We'll have to imagine what you look like.

Mr. Howard Anglin: I'm sorry for the people who have to see my picture.

● (1825)

The Chair: You have up to five minutes, sir, to make a presentation.

Mr. Howard Anglin: All right. Thank you very much for inviting me to address the committee today from Washington, D.C.

The Chair: Thank you for coming, sir.

Mr. Howard Anglin: Thank you.

I recognize the extreme time limits. I will be brief.

I would like to address two aspects of the proposed legislation. Specifically, I'll make a general comment on how Canada's vulnerability to illegitimate refugee claims undermines the purposes of the 1951 convention. Secondly, I will make a short comparison of some of the primary proposals in the bill versus the practice in comparable western democracies.

I'd actually like to start with a short parable, if you'll indulge me. Some years ago, when I lived in New York City, I met a young Canadian woman who'd just moved to New York. One day we were walking down the street in Greenwich Village and she was approached by a man who proceeded to spin a long tale of woe. It was something about needing money for a cab to go somewhere to meet somebody. Anyway, the bottom line was he wanted $20. When he finished, I told my Canadian friend not to give him anything, because it was a scam. She gave him $20 anyway.

A few days later, we found ourselves at the same corner and, sure enough, the same man approached us and told exactly the same story. This time she refused to give him the money. After I gently teased her about her earlier gullibility, she became indignant and defensive. She said she'd rather be a sucker than become cynical.

I've thought of this story frequently as I've reviewed the state of Canadian refugee policy. I've concluded that if Canada wants a motto for its current system, I would humbly suggest the motto “we'd rather be suckers”.

By almost any measure, Canada's refugee system compares unfavourably to other western systems. Some Canadians may take misguided pride in being so indulgent to so many claimants, whether they're legitimate or not. Given the much higher acceptance rate in Canada, I would submit that most of them are not legitimate. These Canadians may console themselves that at least they're not cynical. With due respect, I think it is a self-indulgent and dangerous way of thinking; and worse, it actually hurts those the 1951 convention was intended to help.

The refugees who make it to Canada and apply for refugee status in Canada are disproportionately among the most fortunate, sophisticated, and wealthy of all claimants, legitimate or illegitimate. By contrast, most genuine refugees do not make it much farther than across the border of the country they're fleeing to the first safe haven they can find, where they're often housed in UN refugee camps.

To its credit, Canada has a great program by which it resettles a select number of these overseas refugees. One of the best features of the proposed reforms, and one the government should be congratulated on, is the increase in the number of these clearly legitimate and deserved resettlements.

Canada spends much more money on inland refugee applications than it does on supporting overseas refugees, and that does not include health care and other state benefits, which can be as much as $1 billion or more a year. Ironically, and sadly, every dollar spent in Canada on refugee processing could be more effectively and profitably spent on overseas refugees. The amount spent to process a single refugee claim in Canada could sustain scores of refugees in UN camps every year.

A truly humane refugee system, one designed to benefit the most refugees and the most needy refugees, would focus on refugees in overseas camps rather than accepting virtually unquestioningly anyone savvy enough to target Canada or anyone wealthy enough to get here.

Because my time is limited, I will be very brief in addressing two aspects of the new bill: the timelines for processing claims and the safe country or designated country provision. My focus here will be on a comparison to other international countries, which is my area of expertise.

The proposed time periods of eight days and 60 days bring Canada in line with other western democracies. Actually, eight days and 60 days are still more generous than many other western democracies.

For example, the time limit for making a refugee determination in Australia is 90 days. In Finland, under their accelerated procedure, the average time is 57 days. In Ireland priority applications are decided within 20 days. In France the initial decision must be made within 21 days. Under the priority process, it's 15 days, and as few as five days if the applicant is in detention. In the Netherlands, decisions in the accelerated stream are made within 48 hours and an appeal must be lodged within 24 hours after that decision is made.

Canada's proposal of an initial information meeting within eight days and a hearing within 60 days is well within the international norm for the processing of claims. Likewise, the designated country provision finally brings Canada in line with best practices in refugee law.

● (1830)

The other option is to use what is called a “manifestly unfounded” or “clearly unfounded” standard for identifying frivolous claims right at the outset of the process, and then those claims can be expedited for removal either without appeal or with an appeal that occurs after the claimant has already left the country.

Virtually every western democracy uses one or both of these methods in streamlining the process, and it's really not too much to say that without one method or the other, reform is futile. Both of those are welcome additions to Canadian refugee law.

The Chair: Mr. Anglin, you are over your time. I wonder if you could wind up, please.

Mr. Howard Anglin: I think I'm out of time and I'm happy to take questions, and even answer them, if I am able.

The Chair: Thank you very much.

There are now going to be questions from some of the committee members to all of you. The first person is Monsieur Coderre.

Monsieur Coderre, you have the floor.

[*Translation*]

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

Thank you for coming here today.

It is true that this bill is extremely important because, first of all, we are talking about individuals and, secondly, the decisions we make today will have an impact on the next five to six years, even though the Minister of Citizenship and Immigration has regulatory power to do things.

I would like to thank the Centre justice et foi for its wonderful proposals.

I would like to put things into perspective. I am in favour of setting up an appeal process. I have no objection to public servants being on the frontline, providing they are well trained and claimants are entitled to make a solid appeal if they are turned down.

What is problematic is this list of designated countries. This is not the Agreement on Safe Third Countries. I have already negotiated such an agreement, that is an entirely different matter. That pertains to geographic location, and it is tied to the American reality post-September 11.

You have met many victims and refugees, and therefore I would like you to talk about how these people feel. For example, how would people feel if they were singled out because they came from one country rather than another?

We hear that in Mexico the situation is good because this should be a safe country given that 90% of the claims are turned down. And yet, this country has problems with narcotraffickers, violence against women, same-sex couples, homosexuals, who are persecuted.

I would like you to tell us briefly how these people would feel, and what their frame of mind would be like. Would they feel that they were refugees or second-class refugee claimants?

Go ahead, Ms. Garant or Ms. Dionne.

Ms. Elisabeth Garant: I will give you a quick response. I think that you have put your finger on one of the fundamental elements of the bill and the problems it may raise. With its list of designated countries, this bill might close the door to the most vulnerable people from a wide range of countries. That is why we are recommending that there be no designated country.

The Mexican example is a particularly good one. I believe that a number of you met with Luis Arriaga a few weeks ago. He is the director of the Miguel Agustín Pro Juárez Human Rights Centre, and he spoke about how various groups of people could not receive protection in many regions of Mexico, and that it is wrong to say that if they were to move from one place to another...

For example, if we were to tell women or same-sex couples that their applications would be turned down at the first level and that they would not be eligible for a second hearing, then that would fundamentally alter the process by which claims can be made and processed on an individual basis. We must respect the international convention, which calls on countries to process individual applications, and not base decisions on a group, category or country of origin, which would fundamentally alter the process.

Hon. Denis Coderre: I will not disagree with you on that. That is fine.

[*English*]

Mr. Mooney, if I am right, you were working for the CIC once. Have you been working with Citizenship and Immigration Canada before?

Mr. Philip Mooney: No, I was never with Citizenship and Immigration.

Hon. Denis Coderre: You've never been, okay.

Mr. Philip Mooney: My colleague was.

Hon. Denis Coderre: Okay, Mr. Morson was.

Do we believe that every case is specific?

Mr. Philip Mooney: Immigration is based on an application by an individual. So every single case, whether it is for refugee status, work permits, has to be considered on its individual right. I know of no process in Immigration where there are group immigration documents issued.

Hon. Denis Coderre: Do we believe, then, that the best way to control the flow of eventual bogus refugee seekers would be to apply a policy like we're doing, and like I was doing in the past, a visa, instead of having a country that you designate as, “By the way, don't worry, it's safe there”?

● (1835)

Mr. Philip Mooney: Our opinion of safe country is that you may designate a safe country but it shouldn't be an absolute designation, that within any country there could be reasons and there could be populations at risk. The designation of safe country should be an indicator to a reviewing officer that a political claim for asylum by someone from the United Kingdom, for example, would simply be spurious, whereas a claim by an individual from the United Kingdom who might be the spouse of a police officer and who claims to be battered wouldn't be spurious.

Hon. Denis Coderre: My point is that why bother putting a label on a country if every case is specific? We could put more resources into the RAD, the refugee appeal division. I believe in the RAD, though we didn't apply it for all the reasons mentioned, but I think they have been doing a good job there. So I would accept appeals to the RAD, but why bother saying this or that country is safe when we know there might be some cases that are truly specific? Why shouldn't we focus on putting more emphasis on an appeal board, on the humanitarian level versus the refugee level?

I believe in having an extension, like you. Eight days is way too short. Maybe it should not be 30 days, but maybe 15 days. I don't mind. But at least we need a timeframe that's suitable, because every case is specific and we all know about the psychological trauma and many issues there.

So if we want to be more efficient, don't you think that instead of putting a label on a country, it would be more efficient to go through the process with resources?

Mr. Philip Mooney: What our experience tells us is that many of the bogus refugee claims that are filed are literally carbon copies of each other. These types of claims usually involve some form of political persecution in countries where there is no political persecution.

Hon. Denis Coderre: Yes, but you and I agree that the victims are not those vultures, the so-called immigration consultants, for example, or lawyers, if you want, for the sake of your speech.

But we have to consider people in a respectful way and not say they are bogus. It may be that they didn't have any choices. If we have the proper process and go after the consultant instead of the so-called bogus refugees, maybe we'll have a better way.

Mr. Philip Mooney: My point is that in the system currently, a huge amount of time and energy are wasted by processing every application on an individual basis, when the basis for each application is the same as a hundred other refused applications. In other words, they're not real refugee claims.

So if you want to call this “safe country” or “better processing”, I suppose it's a question of linguistics.

The Chair: Thank you, Mr. Mooney.

The next questioner is Monsieur St-Cyr.

[*Translation*]

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

Concerning the Centre justice et foi, I have gathered that you are opposed, as we are, to the principle of designated countries. In fact, the vast majority of witnesses who appeared before this committee have said that the principle was fundamentally unacceptable, that it was unacceptable that the rights of people would differ depending on their countries of origin. They said that that was particularly unacceptable.

However, a number of witnesses as well as some members around this table are trying to remedy that by putting forward specific criteria, consultations with expert panels and various terms and conditions. Do you believe that the issue of designated countries is a matter of process, or that this undermines a fundamental principle, and that regardless of how all this will be packaged, the issue will remain fundamentally unacceptable?

Ms. Louise Dionne: As we were saying earlier, it is a matter of discrimination, that is to say the factors that are used to decide that refugee claims would not be admissible because the individuals are from a given country, region or territory. The Geneva Convention has even been used to rule on the matters in Europe. We believe it would also be more difficult for women, for example, in cases of spousal abuse, to assert that they have been victims of repression if their country of origin has been designated.

Diplomacy will also come into play with those countries that would want to be included on the list because, if they were to be excluded, that would mean that Canada considers them to be problematic. Therefore, there would also be interference.

● (1840)

Mr. Thierry St-Cyr: If an appeal division or process is established, there is an assumption that errors could be committed, which could lead to serious consequences. The government's proposal excludes from the appeal process countries in which the circumstances are not exactly clear and where, in most cases, people do not appear to be persecuted. However, I find that slightly paradoxical.

For example, take the case of a gay or lesbian from Iran. Everyone could quickly arrive at the conclusion that there is an actual risk that the person is a victim of persecution. If he or she were from Poland, things would not be as clear.

Finally, the government is withdrawing the right of appeal in situations where things are less clear and where, in my view, the risk of error is greater. Do you share that analysis, i.e., that it is rather paradoxical to withdraw the right of appeal from people whose cases will be the most difficult to ascertain?

Ms. Louise Dionne: Yes, we totally agree with that. We share your point of view.

Ms. Elisabeth Garant: I must stress that each refugee claim must be given an in-depth review. It is inherent in the refugee process that the specific facts of each individual case be reviewed.

As it stands, the bill denies people's fundamental right to apply for refugee status. In the IRPA, there are provisions to establish an appeal division, which has often been criticized because it did not allow for a fair and balanced determination process. And now we have a bill that basically does not resolve anything.

A great number of countries, and therefore some of the most vulnerable people, will be deprived of the fundamental right to appeal decisions, which will have been made by a single person. I cannot tell you how many times we have analyzed and denounced the fact that decisions made by a single person are far riskier when they cannot be reviewed. If we exclude a great number of countries, and therefore claimants, as part of the reform of the Immigration and Refugee Protection Act, then we are effecting a fundamental change.

Mr. Thierry St-Cyr: There have also been many discussions concerning the timeframes. In its original bill, for example, the government had provided for a maximum of eight days for the interview. A number of witnesses who appeared before the committee said that the 28-day period was quite appropriate. Why not keep that period for the initial interview? Others have talked about 15 or 20 days.

Should we at least ensure that the current 28-day period is maintained? Would it be feasible to shorten that timeframe? What are your thoughts on that?

Ms. Louise Dionne: In my view, we must always give people a chance. We have to allow refugee claimants to get their bearings, if you will. We tend to forget that these are often people who have experienced traumatic events. We have to allow them to gather the documents they need to build their case, meet with their consultants and get a good understanding of Canada's refugee system. That all takes time. People can come from different cultures, different political systems and different societies. All that takes more than eight days. That is impossible, even in the best of cases. People need more time to properly understand the process they are moving through.

Mr. Thierry St-Cyr: Ms. Garant?

Ms. Elisabeth Garant: In the case previously mentioned, i.e., in the United Kingdom, the all-too-brief timeframes have been challenged before the courts, since they did not allow for the proper scrutiny of claims. Why should we adopt processes here that did not work elsewhere, in other countries?

It is simply impossible to think that people can gather the required documents within eight days. They must be given the time to collect and process the information. In any event, cases will have to be postponed. Let us be clear. This proposal of the bill rests on a mistaken assumption.

Why is there such a significant backlog? It is because there are not enough people to process claims, and not because the timeframes are too long. There have not been enough board members to adequately process claims. Let us not shift the source of the problem and create new ones.

[*English*]

The Chair: Thank you very much.

Ms. Chow has the floor.

● (1845)

Ms. Olivia Chow (Trinity—Spadina, NDP): On the justice issue, as you know, we have a minority government, and if you look at the numbers—prior to Mr. St-Cyr leaving, but he'll be back—the Bloc, the New Democrats, and the Liberals have the majority on this committee. Judging from the questions you've heard, you can probably assume that the Bloc and the New Democrats will be willing to and will urge other MPs to delete the safe country designation, precisely because of the concerns of everyone.

The Canadian Council for Refugees and many other organizations have said that this is unfair, that it treats refugee claimants differently, especially women fearing domestic violence, and gays and lesbians who leave countries where being gay or lesbian is a crime sometimes punishable by death, that having this clause here is terrible.

Do you have a sense about whether the opposition parties have consensus that this section absolutely needs to be removed from Bill C-11?

[*Translation*]

Ms. Louise Dionne: Yes, as we have indicated in our brief, we think that part should be withdrawn. We do hope that committee members will follow that recommendation.

Ms. Elisabeth Garant: We know that many people would not be living with us here, in Quebec or in the rest of Canada, if they had been subjected to that rule. In fact, a great number of people have been accepted despite the fact that they came from places that Canada could consider as designated countries, categories or even regions. For example, it could well be determined that some areas in the Democratic Republic of Congo are less at risk than the border regions, in particular, and therefore some of the most vulnerable people could be turned away.

We, along with many other groups, intend to ask members of all parties, especially those making up the majority, to withdraw that element from the bill at all costs.

[*English*]

Ms. Olivia Chow: Every member.

[*Translation*]

Ms. Elisabeth Garant: I hope it will be a unanimous choice, and that we will have convinced all members that the inclusion of that element in the bill is the worst of choices.

[*English*]

Ms. Olivia Chow: Let me ask you about the PIF, the personal information form, and the procedure, which is the hearing. Right now there is an additional layer, which is the interview, and then there is the hearing. What if we removed the interview and asked the officers to explain the refugee law; explain that they need to go to people who are qualified as consultants and lawyers? They would give them basic information to prevent the claimants from believing the snake-oil salesmen out there so they would understand. Rather than doing an interview, just give them basic information upfront. That would skip four or five days. It wouldn't matter, because it's not an interview. Then we'd leave the PIF and the hearing for within 60 to 90 days.

Is that something you would be comfortable with? Do you think that would be easier, rather than having the interview—whether it's six, 12, 15, or 20 days—where people may not come to terms with their problems?

● (1850)

[*Translation*]

Ms. Elisabeth Garant: I would simply invite you to consider the appendix to our brief, i.e., the last paragraph on page 13. One of the members of our committee used to be an IRB member. He points out the problem with the interview, as proposed in the bill. He says that it should be reduced to a minimum, and that the question should be as simple as possible so as not to impede the core of the processing procedure, which takes place at the hearing.

[*English*]

Mr. Philip Mooney: I'd like to make two points. First of all, there are many legal contracts in Canada, specifically employment contracts, where individuals must make a statement on the contract that they have had the opportunity to seek and obtain independent legal advice before they enter into the contract. We believe that for an individual who's making an application for refugee status, a similar statement should be built in. Whether that's explained to them after eight days or 30 days is irrelevant.

Secondly, we also believe that with the current system, when someone comes in and says they want to claim refugee status, they're locked into the system. Now all of a sudden the only choice is to withdraw the claim, in which case the person is removed. So it's like buying a lottery ticket. Even if the chance of winning is one in 38 million, like Lotto Max, they're going to stay with that chance until the draw is made.

What we think should happen is individuals who come and say they want to make a refugee claim should be given 30 days to consider whether they are really serious about it. If they say after 30 days that they have now sought and obtained professional advice on that issue, they should not be considered refugee claimants. They should actually be considered temporary residents. And if they remove or withdraw their claim, they're given possibly another 30 days to leave the country and they are not prohibited from returning. There's no black mark on their file. They might even find a job as a skilled worker when they're here, because they need one. They may even qualify for another immigration program.

We think we should put that time before the hearing to more efficient use, because that would eliminate a large number of claims that currently end up in the system because people have no other choice. I see this in my client base all the time. They ask, what chance do I have? If I tell them they have a 5% chance, they all believe that's better than nothing.

The Chair: Thank you, Mr. Mooney.

Mr. Young has the floor.

Mr. Terence Young: Thank you, Chair, and I'd like to share my time with Mr. Calandra, if that's agreeable.

Mr. Mooney, thank you for being here today.

Ladies, thank you for being here today as well.

Under the proposed bill, Mr. Mooney, interviews for claimants who appear to be traumatized or vulnerable can be postponed. So if interviewing officers at the Immigration and Refugee Board have the flexibility to adjourn the interviews in that way, shouldn't a reformed system aim to have a decision on a claim as soon as possible in most cases where there's evidence of trauma or vulnerability?

Mr. Philip Mooney: I certainly agree with the idea of having a claim decided, or a hearing, within 60 days. And I think since that's the stake in the ground we've all set, we're talking now about nothing that delays the process, nothing that encourages people to stay here too long. We have that 60-day stake in the ground. Having a hearing after eight days.... I've heard from many of our clients and individuals that they can't find their way to the corner store in eight days.

Mr. Terence Young: But it's not a hearing. It's an interview.

Mr. Philip Mooney: Even as an interview.... You're in front of a formal person. The last formal person they saw or the last person in authority may have been an individual who was persecuting them, and if these are CBSA officers, they're sitting in front of armed individuals. So I believe there's nothing to lose if we change the eight days to some time within the process and we redefine what that interview is about. I think the process doesn't suffer. The integrity doesn't suffer. Instead, we give them more information to make a better and more informed decision.

Mr. Terence Young: Thank you.

We know that a lot of claimants suffer due to the uncertainty when decisions determining their status are delayed, sometimes for months. Aren't faster decisions generally better for claimants? Wouldn't this enable them to get on with their lives in more certainty?

Mr. Philip Mooney: I absolutely agree that a faster decision is of benefit to the claimant, because these are people's lives we're talking about. We work with these people every day. We see the stress they're going through while they're waiting for a decision. In the old days, sometimes not that long ago, some of these people were waiting three, four, or five years for decisions without a letter. The stress on their families.... Even though you say they're here, and aren't they lucky, they never know if the next day there will be a phone call saying they're going to have to leave.

I absolutely agree that faster decisions do two things. They certainly reduce stress on the applicants. They also send a huge signal back to countries where individuals are trying to take advantage of the system that it's not worth it, you can't get the money you paid to these vultures who are going to bring you here; you can't make that money back in this short period of time. And they'll move on to easier pickings.

● (1855)

Mr. Terence Young: Thank you.

Should failed claimants be provided access to a multiple number of recourses that essentially serve to delay their removal and build their case to remain in Canada? Is that really fair?

Mr. Philip Mooney: I don't know about multiple courses.

Mr. Terence Young: That's what we have now.

Mr. Philip Mooney: We certainly have that now. Many individuals get on the legal treadmill with ever-increasing costs, so that after four or five years they've spent tens of thousands of dollars to try to stay in the country, when their claims were not good claims to begin with. I think if you do the first steps right you have all the time in the world for due process.

I believe due process means exactly that. We have to give them a fair enough chance to make sure their case is judged on its merits, given the fact of new evidence arising, and also to make sure they are not put in danger when they're sent back, if they have to be sent back.

Mr. Terence Young: How many times does a case have to be judged on its merits? Right now it can go on for years and years, up to nine or ten years.

Mr. Philip Mooney: Yes, and often the reasons for those delays are not the individuals but the processes.

Mr. Terence Young: Sometimes the lawyers and the consultants cause the delays as well, right?

Mr. Philip Mooney: It depends on which part of the process. Judicial review is always done through lawyers. They're at the vulnerability of the court schedule. I believe we say in Canada that everyone has a right to judicial review, so they have it.

Mr. Terence Young: Thank you.

The Chair: Mr. Calandra.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): I wonder if you could give me some of your thoughts with respect to the current system and its vulnerability to abuses, and how it frustrates the current process, the removal of failed claimants.

Mr. Howard Anglin: Absolutely. I think Canada is overly generous compared to any other country, with acceptance rates that are double or triple the average of western countries. Many European countries have acceptance rates for refugees in the single digits; Canada's has varied between 40% and 60% over the last 30 years. This is clearly counterproductive.

To draw an analogy to urban planning, if you have traffic congestion and you try to solve it by building more and wider roads, you find that you get more drivers and never really fill it to capacity. Similarly, generous immigration policy, one that lets in far more claimants by a wide margin than any other western country, will see the number of applicants swell and backlogs persist or even grow.

I'm happy to go on the record saying that Canada won't get its refugee system in order and won't get rid of the backlog until it does one or both of two things: either it has to restrict the benefits available to claimants before their claims are accepted, benefits like the right to—

The Chair: You have one minute.

Mr. Paul Calandra: I think we've lost him.

Mr. Mooney, you had talked about the eight-day interview. You seem to have turned it into an interview to an armed guard, to Lord knows what else might be present at the interview. If I were to suggest to you that it's just an opportunity for somebody to speak to somebody after going through something as traumatic as you suggest, and it really gives them an opportunity, like the 28-day written, to tell us what happened, and it would be written or sent in an audiotape to whoever decides to represent them later on, and it gives a clear, non-threatening way of starting their process in Canada, getting information to them about what their options are, how can that not be better than the current system, which lets people languish for up to 28 days? Are you suggesting that no mistakes are made on the 28-day application, that people aren't maybe falsifying, or that they don't go down the wrong process because it's 28 days?

Mr. Philip Mooney: Those were two questions.

The Chair: Maybe you could just answer one.

Mr. Philip Mooney: Okay. I've never been a refugee claimant, but in our meetings and discussions with refugee claimants they consider the first few weeks in Canada to be not catastrophic, but absolutely mind-bending. Again, when they go to see an officer for the first time, these are officers and they are armed, all right? We've had that comment come back many times. Individuals see armed people as authority, and they're not comfortable in that interview.

At the same time, the 28-day issue is one that says if you use the 28 days to make sure they understand what everything is all about, then the 28 days are well used, because a certain percentage of them will not go ahead. We see many people in the last stages of the process who should never have been there. They could have come here as skilled workers, as temporary workers, as students. We see many people like that, but instead they've gone through four years of hell.

● (1900)

The Chair: Thank you.

I'm sorry, I have to cut everybody off because we've only allowed an hour for you. I apologize. We were a little bit late in starting and we've had technical problems with Mr. Anglin's connection in Washington.

Mr. Garant, Ms. Dionne, Mr. Mooney, Mr. Morson, and Mr. Anglin.... Can you hear me? Too bad, I guess. I'm sorry. It's unfortunate. But I want to thank you all for coming and making a contribution to the committee. It was appreciated. Thank you very much.

This committee will suspend for a few moments.

● _____ (Pause) _____ ●

The Chair: Okay, ladies and gentlemen, we'd like to start the second hour this evening.

We have appearing before us the Minister of Citizenship, Immigration and Multiculturalism, the Honourable Jason Kenney. With him is the assistant deputy minister, strategic and program policy, Les Linklater; the director general, refugees, Peter MacDougall; the senior legal counsel manager, refugee legal team, legal services, Luke Morton; and last but not least, the director, asylum policy program development, Jennifer Irish.

Now, all of you appeared before us at the beginning of these sittings. With the exception of the final hour, which will be the Immigration and Refugee Board of Canada and the Canada Border Services Agency, our hearings will be concluded. After that we will start clause-by-clause.

Minister Kenney, I assume you've been listening to some of the presentations to date and that you'll have some comments to make to some of those presentations. We would like to hear from you now. Thank you for coming, Mr. Minister.

● (1905)

[*Translation*]

Hon. Jason Kenney (Minister of Citizenship, Immigration and Multiculturalism): Thank you, Mr. Chairman.

I have read all of the witness statements as part of this review.

Let me begin by thanking all members of the committee for their diligent efforts over the past month. While not all members may agree on all details of the bill and the broader package of reforms, there is no doubt that all members have discharged their duties as legislators with evident concern for this very serious issue in all of its complexity.

And you are right to have done so because, at the end of the day, this reform is not about words on a piece of paper. It is about people. It is about justice, fairness and about redeeming Canada's refugee system from years of dysfunctionality, so that we might better protect those in need of our help, while discouraging those who would abuse our generosity.

[*English*]

Let's remember why we're here. For too many years governments of different stripes, including of my party, have looked the other way rather than address serious problems that have burdened—many would say have broken—our asylum system. With an average long-term backlog of 40,000 cases, we have a system that forces victims of torture to wait for more than a year and a half for the certainty of Canada's protection, while allowing manifestly false claimants to game our system and our taxpayers for years.

Mexican President Calderon reminded us of the consequences of our broken asylum system just last week, when he said,

> I...know that there have been some who, abusing the generosity of the Canadian people, have perverted the noble aims of the asylum system to their own ends, which led the Canadian government to require visas for those travelling between our countries.

He went on to say, “We sincerely hope that the solution that this Parliament is studying through comprehensive amendments to the refugee law will also serve as a bridge that will allow us to renew our exchanges”.

Band-aid solutions have been tried in the past, Mr. Chairman, but they have failed, like injections of more taxpayers' money to fuel the broken status quo, but which left us no further ahead in dealing with a cumbersome system that is, quite frankly, too easily abused.

[*Translation*]

And so we must act. Bill C-11 represents an historic opportunity to do so. I do not pretend that the bill as presented by the government is perfect. But it is the result of years of study and consultation by my ministry, and experts, to design an asylum system that, in the words of former IRB Chair Peter Showler, is both “fast and fair.”

I believe that this bill strikes the right balance. But as I have said from the beginning of the process, the government is open to thoughtful improvements that achieve what I believe is our common goal: a fair and fast asylum system.

[*English*]

That this is the common goal came clearly to light in March of last year when the official opposition immigration critic, the member for Vaughan, demonstrated leadership by standing in the House of Commons and asking me, “Why has the Conservative government failed to provide a timely and efficient refugee determination system to people who desperately need one?”

His question, to be fair, reflected the policy of his party, which in its 2008 platform said, “A Liberal government will respect Canada's international commitments to refugees while providing a timelier and efficient refugee determination system”.

I replied to his question that I was delighted to hear the interest of the member in hopefully working together to create a more efficient refugee system. We have indeed, all of us, worked together to that end.

As members of the committee will know, I consulted with many of you prior to the introduction of Bill C-11, inviting ideas for sensible asylum reform. Following introduction of the bill, I went across the country to listen to stakeholders and others.

I'm very pleased to report that following that tour, virtually every newspaper editorial board in the country endorsed our reform package, as did dozens of stakeholders. But I took note of concerns expressed by some groups; for example, Christine Morrissey, the founder of the Rainbow Refugee Committee in Vancouver, and Heather Mantle of the Matthew House Refugee Centre in Windsor.

When Bill C-11 came before the House at second reading, I listened to every speech. I can assure you that I've read all the transcripts of this committee's hearings. During all of these debates and consultations, the government has taken note of constructive criticism and we recognize that we must work together with the opposition to craft a bill that will reflect a parliamentary consensus. But let me be clear, we cannot and will not do so at any expense.

As you proceed to clause-by-clause, we are open to sensible amendments that would render a fair and fast refugee determination process. However, if amendments are made to the bill that for example would significantly slow the process or would undermine our efforts to disincentivise waves of false claims from safe democratic countries, then the government will elect not to proceed with the bill and its associated reforms.

So the stakes are high. If members choose to play politics with this real opportunity for balanced reform, then let's be clear as to what we will all be losing. We will lose a new refugee appeal division for the vast majority of claimants, an appeal division that's better than what was contemplated in IRPA in 2002. That means that if the bill fails as a result of unreasonable amendments, no claimants from any country of origin will have access to a refugee appeal division. That will be a choice if people make such amendments.

Protection for bona fide refugees in a few weeks will be lost, rather than 19 months, which is the status quo. Removal of false claimants in about a year, rather than about five years, will be lost, as will some $1.8 billion in savings for taxpayers.

A program of assisted voluntary removal for failed claimants will be lost. Also, $540 million in new resources for the refugee system, including a 20% increase in resettled refugees and a 20% increase in the refugee assistance program for government-assisted refugees, would be lost. Finally, fully independent decision-makers—rather than political appointees—at the refugee protection division of the IRB would be lost.

Colleagues, I sincerely hope that we will not lose these progressive reforms. We can work together to put the interests of Canada, of taxpayers, of victims of persecution ahead of any of our own political interests. We will do so thanks in part, I believe, to the leadership of the official opposition. Their immigration critic has approached the government with determination and with a series of compelling and we believe workable amendments to the bill, as well as related regulations and IRB procedures. Allow me to detail these changes.

In response in particular to Mr. Bevilacqua's request to increase clarity, we propose to include the term “safe” in the legislation in relation to the designation of countries, and to provide greater transparency around the criteria that will have to be met to designate a safe country of origin.

We also propose to clearly limit the powers of the minister in the designation process. The accompanying regulations, which I am pleased to table today in draft form, further outline the criteria that will need to be met for a country to be designated as safe. You will note that these draft regulations further limit the minister's powers and require that a safe designation can only be made if an advisory panel, including at least two independent external human rights experts, recommends it. Of course, as we've said from the beginning, we anticipate the involvement in the UNHCR in that process.

● (1910)

These amendments go a long way toward depoliticizing the designation process.

A second amendment addresses concerns regarding access to the humanitarian and compassionate process. We've tabled an amendment that would allow people who withdraw their refugee claim prior to a hearing before the RPD to make an application for humanitarian and compassionate consideration. So that concurrent bar would be lifted at the front end of the process to allow people to redirect their claim into the appropriate stream.

A third legislative amendment we have proposed is to transfer the pre-removal risk assessment function from my ministry to the IRB. As the IRB presently delivers the majority of risk assessment decision-making, we agree with many experts that it is a more logical place in which to centralize the risk assessment function.

The official opposition immigration critic strongly advocated the views of many that the proposed timelines for the interview and initial hearing are too short. I do not share that concern. I believe, in fact, that the proposed timelines are longer than in all, or virtually all, of the comparable systems—for example, in western Europe—and those are benchmarks against which we must assess ourselves. But in order to get consensus on these reforms, I made the difficult decision to accept Mr. Bevilacqua's recommendations and to write to the IRB to suggest the timeframes for the triage interview or the information-gathering interview be moved from eight days to 15 days, and that the RPD hearing be moved from 60 days to 90 days. We've written to the IRB chairman recommending that and expressing our policy preference, and you will see in the letter tabled before you that he has written back positively.

I'll close now, Mr. Chairman.

Let me be clear, these changes together represent very significant changes to the bill, to procedures, and to regulations, and address most of the principal concerns that have been expressed by opposition members and interest groups. While I frankly have concerns that some of these measures may go too far in the other direction, not maintaining the kind of balance we hoped for, I know that the government must compromise in order to move the Balanced Refugee Reform Act forward, so we will compromise. For the greater good, we will accept these changes.

● (1915)

[*Translation*]

In closing, I would like to once again thank all of you for your hard work. And in particular, I would like to recognize the member for Vaughan, who has been a tenacious advocate for his party's tradition of fairness and justice, while demonstrating the kind of leadership that we need to make this minority Parliament work for all Canadians.

I look forward to your questions.

[*English*]

The Chair: Thank you, Mr. Minister.

As you can well imagine, there are questions. Monsieur Coderre has some questions for you.

You have the floor, sir.

[*Translation*]

Hon. Denis Coderre: Thank you, Mr. Chairman. I will be sharing my time with Mr. Karygiannis.

Minister, you can congratulate and thank the official opposition, but what you are saying, through barely veiled threats, is that if this does not work, there will be no legislation.

We have heard many things that we support. We agree that the timeframes have to be changed. We also agree that the process will lead to the creation of an appeal division. However, we are confronted with the fact that each case is unique. If we are to establish a list of safe countries, that would mean that each country would be labelled from now on. This is a regulatory matter. You can always change the regulations. Even if we establish a committee that were to decide—and you can always say that it would be apolitical—the fact remains that we would agree to a principle that would remove the specific or unique character of each case.

I have asked your colleague some questions. There are people I know who do remarkable work, including Mr. MacDougall. I asked him a question to which I kind of knew the answer. He indicated that we need to impose visas if we are to streamline the flow of people who are intent on abusing the system. That is something you have already done in the case of Mexico.

Let us say that we are in favour of all elements, except one. That at least is my case. Personally, I do not approve the imposition of a list of safe countries. Am I to understand that, if we were to strike subclause 109.1 of the bill, but are in favour of all the rest, you would withdraw the bill? I am not proposing amendments that would change things. I am in favour of most of the amendments. We have discussed them, and they reflect what witnesses have told us. You are saying that if we withdraw subclause 109.1 of the bill, which provides for the creation of a list of safe countries, you are ready to scrap the entire piece of legislation and not move forward? Is that so?

Hon. Jason Kenney: Yes. That is what I told Ms. Chow, who asked the same question. I said that we could not move forward with the bill if we did not speed up the process by taking into account people who come from democratic and safe countries, without the means to deal with the waves of bogus refugee claims of people from safe countries, because we will lose that absolutely essential balance.

I would remind you, Mr. Coderre, that you yourself, as minister, decided to not establish a refugee appeal division. Your government made that decision. As a result, today's unsuccessful claimants cannot access an appeal division. We are proposing to add an appeal division for the vast majority of refugees. According to the previous government's position, even nationals from North Korea and Iran could not access the Refugee Appeal Division. According to our proposal, all of those people would be eligible. I see that as progress.

Moreover, as a result of the reforms, one category of foreign nationals cannot even have a hearing to consider their applications. I am referring to U.S. nationals, pursuant to the Safe Third Country Agreement with the United States.

You are the minister who signed that agreement and who said that some foreign nationals would not even have access to a hearing. So I found your position somewhat inconsistent with regard to that section of the bill.

● (1920)

Hon. Denis Coderre: Minister, with all due respect—I even asked Mr. MacDougall this question—I must say that we make a very sharp distinction between what is in this bill and this safe third country agreement. Indeed, the United States signed the Geneva Convention of 1967, under the auspices and umbrella of the United Nations High Commission for Refugees. We did some work as a result of this. As you will recall, we discussed the matter in all its aspects. At any rate, we had some ad hoc policies that enabled us to apply exceptional measures.

You are creating a diversion. As Mr. MacDougall rightly said, the safe third country agreement is completely different from this list stating whether or not such and such a country is safe. Essentially, you want to repair the mistake you made with Mexico by imposing a visa. You are grappling with this mistake and you are not prepared to assume the political consequences. You want to rectify this by implementing a list so that you can finally tell Mexico that it is deemed to be a safe country and straighten out the issue pertaining to nationals from this country. You do not need to change the legislation in order to deal with the flow of refugees. When we left government, there were 20,000 refugee determination cases, and now you have 60,000.

We need regulations and political action, but you are somebody who is responsible for the policies. You make decisions and you are responsible for these decisions. If we had a visa policy that worked very well, you could deal with the flow of what you refer to as false refugees. We did this, for instance, when I imposed a visa on Costa Rica.

Mr. Minister, I know that you want to develop your legacy. Every minister tries to flaunt his accomplishments. Nevertheless, why not set up a system, through regulations, that would allow appeals to be heard and shorten the timelines? You said so yourself, you quite rightly bragged about my colleague from Vaughan—because there is a little bit of us in all of this. You already have the tools to strike this balance with respect to the visas. Mr. MacDougall said so, and rightly so. So why does it bother you to set this aside and adopt the rest so that we can have a process?

Hon. Jason Kenney: Mr. Chair, Mr. Coderre is right. We could use the visa tool universally, as Australia does, and impose it on every country. Personally, I do not believe that this would be in Canada's interest. We have seen the negative reactions from Mexico and the European Union.

At the same time, we have to be consistent. Last week, the Liberal Party critic for tourism, Mr. Bains, said that we would have to withdraw the visa that has been imposed on Mexico. Mr. Coderre indicated that we should be imposing visas on a certain number of other countries. We need a tool that is somewhere between these two positions.

You mentioned that there was a backlog of 20,000 refugee claims under the former government. Over the past decade, the average number has been 40,000 claims. In 2004, there were more than 50 000 cases. Finally, I would remind you of what your leader said:

[*English*]

> There are a number of countries in the world in which we cannot accept a bona fide refugee claim, because you don't have cause, you don't have just cause coming from those countries. It's rough and ready, but otherwise we'll have refugee fraud and nobody wants that.

[*Translation*]

Personally, I do not agree with your leader at all. I think that he goes too far in his policy to prevent a hearing—

[*English*]

The Chair: Okay.

[*Translation*]

Hon. Jason Kenney: —even in the case of a hearing for a claimant. We are simply proposing that the processing time be sped up.

[*English*]

The Chair: Thank you, Mr. Minister.

Mr. Coderre, we'll have to move on to Monsieur St-Cyr.

You have the floor, sir.

● (1925)

[*Translation*]

Mr. Thierry St-Cyr: Thank you.

Mr. Minister, in your answer to Mr. Coderre, you talked about the need for a mechanism, a tool to speed up the processing of applications and to prevent potential cases of fraud organized by people who want to abuse the generosity of our system.

During our hearings, a variety of witnesses, lawyers, all kinds of representatives, mentioned and put forward another tool. This tool, which is not a list of designated countries, would rather allow the Canada Border Services Agency to isolate cases to be processed by the IRB as a priority. These cases could concern an individual or groups determined on the basis of national criteria. These people would have the same rights, but their files would truly be dealt with quickly. In that way, if it was a case of a situation of abuse, as may have been suspected from the outset, they would be returned to their country of origin quickly.

According to most people, and I also agree, this system would allow us to be fairer, and to not shoulder the blame of having to grant different rights according to the country of origin. Moreover, we would avoid cases being brought before the Federal Court of Canada by people who want to challenge the decision or file a second appeal, as is currently the case, because they feel that they have not had the opportunity to assert their rights.

As you have carefully read all of our interventions, would you be prepared to consider this expedited method of processing individual claims, if the committee judged it to be appropriate, in place of the mechanism based on a list and on the denial of the right of appeal for certain individuals as a result of their country of origin?

Hon. Jason Kenney: Your comments are most interesting, Mr. St-Cyr. I would note that this system is comparable to several that are currently in effect in Western Europe. This type of process includes an interview that takes place immediately after a claim is filed, which allows the border official to make a preliminary determination.

I have studied all of the options concerning this problem of bogus claims coming from countries that we consider to be safe, including this idea. However, government lawyers have assured me that adopting such a system would be *ultra vires*. It would contravene the Canadian Charter of Rights and Freedoms and the Singh decision of the Supreme Court of Canada from 1985. According to the case law resulting from that decision, we are obliged to grant each claimant a hearing. The system you are proposing is therefore—

Mr. Thierry St-Cyr: I am sorry to interrupt you, but that is not what I was talking about.

The proposal that was made by the Canadian Council for Refugees, among others, and that was also mentioned by the Barreau du Québec and by the Canadian Bar Association was quite different. What they were proposing, rather than creating a list of designated countries, was to allow the Canada Border Services Agency to target the cases that seem suspicious to them, so that the IRB could process them as a priority, in the same way, while granting the same right of appeal, using the same procedures, but while fast-tracking them. We could then settle these cases before dealing with the files of claimants that we judge to most likely be legitimate.

This alternative was more or less agreed upon, and you have probably read about that in the reports following our hearings. Is this a tool that you would be prepared to take into consideration, at the very least?

Hon. Jason Kenney: Mr. St-Cyr, we believe that with the proposed system and the changes that would be made, everyone would be able to get a hearing quickly, that is to say within the 90-day timeframe. Also, the IRB official who would carry out the preliminary interview would be able to propose an expedited process for the persons who clearly seem to be bona fide refugees who are in need of our protection. I believe that we have already provided for the consideration of the specificities of each case in the reform.

From the outset, we have had a system without an appeal division. We would add an appeal division. No one would be a loser in the new system.

● (1930)

Mr. Thierry St-Cyr: Yes they will, because you have closed many other doors. There are humanitarian considerations that can no longer be used, as well as the pre-removal risk assessment and the temporary residence permit. Therefore, there are a whole series of doors that have been closed. The first step is no longer managed by board members, but rather by public servants. It seemed to me that there would be some kind of balance once everyone had access to the Refugee Appeal Division, which is to say that everyone would be offered the right to appeal, but in exchange, we are closing the door to humanitarian and compassionate grounds, to temporary residency and we are closing the door on the PRRA.

On the other hand, we cannot close a series of doors and not offer anything in exchange. Therefore, in my opinion, it would be better to find an expedited mechanism that would offer everyone access to a true appeal.

Hon. Jason Kenney: Mr. St-Cyr, I would remind you that within the asylum system in Western Europe, for example in the United Kingdom, a person has the right of appeal after having been removed at the border. They can therefore file an appeal on paper after having left the country. Furthermore, in several other countries, there is no right of appeal. There is no right of appeal in Canada, but we are adding a right of appeal for the vast majority of people.

Mr. Thierry St-Cyr: Mr. Minister, you are saying that this is an improvement. If the person comes from a designated country, they will not have the right to appeal, nor will they be able to claim humanitarian or compassionate grounds, have access to the temporary resident's permit, nor the pre-removal risk assessment any longer. Therefore, for that person, there is in fact less.

I understand the will to expedite the process, but the bottom line is that it is false to say that everyone gains something. There will be some who lose.

Hon. Jason Kenney: I do not understand the problem you have with the concept of designation of certain countries. The Immigration and Refugee Protection Act is full of country designations: safe country designations for refugees in their own countries, designations for temporary moratoria on removals, designated countries for which visas are mandatory, etc. There are already many designations. We continue to subscribe to the same legal principles, that is those that are at the heart of the Immigration and Refugee Protection Act.

Mr. Thierry St-Cyr: In this case, we are depriving some people of rights as a result of their country of origin. In many of the most problematic cases, we will be withdrawing the right of appeal.

In the case of people from Iran who claim they are being persecuted, there is a low risk of error, because everyone agrees that there is a great deal of persecution in that country. On the other hand, in the case of people from Poland who say they are being persecuted because they are homosexual, the risks are greater that they will have difficulties and the risk of making mistakes is greater. That is where an appeal division would be useful.

I asked you the question the first time you appeared before the committee, Mr. Minister. You have designated a list of countries where it is very unlikely, in your opinion, that people could be refugees. If these people are recognized as refugees, your bill would ensure that you deny them the right to appeal. Under your bill, you withdraw the right to appeal in the case of people coming from countries where, in your opinion, it is unlikely they would have suffered persecution. Finally, it is as though you would be admitting that—

[*English*]

The Chair: Perhaps you could wind up.

[*Translation*]

Mr. Thierry St-Cyr: —ready to live with mistakes just in order to speed up the process. You are ready to live with those mistakes in order to speed up the process.

Hon. Jason Kenney: No. As I have said, Mr. Chair, we are proposing a system that exceeds our obligations under the Canadian Charter of Rights and Freedoms, the convention and our international obligations. Everyone will be able to access the Refugee Appeal Division, even foreign nationals from designated safe countries. The vast majority of people will win their fact-based appeals before the Refugee Appeal Division, which currently does not and will never exist if immoderate changes are brought to this bill.

[*English*]

The Chair: Thank you, Minister, Mr. St-Cyr.

Ms. Chow.

Ms. Olivia Chow: What do you think of getting the extra layer, getting rid of the interview? Rather than having the interview, people would come in, an officer would describe the refugee process, the destination, or humanitarian grounds, or temporary worker, tell them that this is the place if they need a lawyer, and this is how they can find a lawyer or qualified consultant. Lay out the information to the people who want to declare refugee status. Leave it at that. Skip the entire process. If they say refugee, then give them the form, let them go and find a lawyer or whoever, fill that in, and actually then go into a hearing. Why not do that? Why have an extra hearing? You can call it an interview. Whatever you call it, it's almost like a hearing because you're being interviewed. Sometimes, whether it's eight days, ten days, twenty days, if you haven't quite processed your information, then it's difficult to get your information out.

Also PIF, which is the personal information form, allowed the claimants to set out their story. Since you're talking about the U.K., I noticed that the U.K. got rid of PIF and the UNHCR applied for the reintroduction because the use of the forms helps to focus a hearing. So why get rid of that PIF? Why add another layer and have an interview right at the beginning?

● (1935)

Hon. Jason Kenney: We actually see it as streamlining rather than adding a layer. We believe, and this is the reflection of the department in consultation with the IRB and experts, after years of analyzing this, that right now people don't have.... First of all, I would remind you, when people come in, very typically they have an interview with a CBSA officer, a law enforcement officer, at the port of entry. We talked about—

Ms. Olivia Chow: But that information is not being used for the hearings.

Hon. Jason Kenney: That information is on their file. That information is being taken by someone wearing a uniform. We talk about people who are being traumatized. They're fresh off the plane, they're sitting down—and I've been in the rooms—in these sealed rooms that, frankly, look like an interrogation room, and they're being asked questions about their claim. That's all going on their file. That's part of the eligibility review, but it's all on their file.

We propose there be much less reliance on that, by not having a hearing or confrontational questioning but having the intervention and the help of a trained public servant at the IRB, who would sit down, explain the process to them, take the nature of their claim, and help them to understand what they're going to need. If they need advice on how to find counsel, then they would be told how to do so. If they need a recommendation for a later hearing date—

Ms. Olivia Chow: So does that actually replace PIF, or is it in addition?

Hon. Jason Kenney: Yes, it replaces it—

Ms. Olivia Chow: Why replace it?

Hon. Jason Kenney: The triage interview replaces PIF, although the outcome of it will be a PIF-like form that will be gathered by the interviewer. That form and the relevant tape recording will be provided to the claimants and they will then have the ability to make amendments to the information they have furnished up to probably about 20 days prior to the actual hearing, which, based on the timelines we're suggesting, would be 70 days into the process.

Ms. Olivia Chow: Why not give the person the information? If you're asking someone who has been tortured to actually describe the situation, that's very difficult in the interview process, because it often takes a few discussions, a few connections with that person, two or three times, before the person can actually open up to an advocate, or a lawyer or a consultant, before they could actually write their story out. Why not rely on themselves to write their story, their narrative, rather than doing it through the interview process? Because it's a fundamentally different process, different practice here.

Hon. Jason Kenney: They do write their own story.

Ms. Olivia Chow: I don't understand how that would have to do with—

Hon. Jason Kenney: Let's be honest. Sometimes we're talking about people who are illiterate. So they're not actually writing their own story here; they're actually able to relate their own story in their own words and then subsequently amend it, even upon the advice of counsel. I don't understand why there's this notion that trained public servants who are working in the refugee board are somehow going to be aggressive or hostile when faced with particularly bona fide refugees or any claimant.

Right now you come, you make your claim at the port of entry, you're taken into an interrogation room, you meet someone who's wearing a uniform, and you're interviewed. Then they give you a form and say they'll get back to you. They don't see someone from the IRB for 19 months.

Ms. Olivia Chow: Well, it could be 60 days or 90 days. That should be faster.

Hon. Jason Kenney: Here, under the system we're proposing, someone from the IRB will be giving them the standard information on their source country, which they can seek to address or rebut. They will be giving them a tape recording of their interview. They'll be given a PIF form, which is the result of the interview. They'll be scheduling their interview later if they need time for trauma counselling or earlier if they're clearly bona fide claimants and can be accepted more quickly.

So we think it allows for a kind of positive intervention that actually helps the claimants and renders the system more efficient.

● (1940)

Ms. Olivia Chow: Let me just go on to another area.

In the past, how many have had the benefit of having more than one panel member because of the complexity of their case? Occasionally there's more than one panel member, right? In the 1980s there used to be three panel members. That was reduced to two panel members, and then reduced to one panel member. The appeal division came about because we kept shrinking that panel from three to two to one.

So do we know how many there have been? Have there been hardly any? There have been maybe two cases?

Hon. Jason Kenney: My officials tell me there have been very few, and we'll get back to you with a precise number.

Ms. Olivia Chow: So there have not been a noticeable number of them.

Would we still allow those complex cases to have more than one board member?

Ms. Jennifer Irish (Director, Asylum Policy Program Development, Department of Citizenship and Immigration): There is provision for that. In fact, one of the roles of that information-gathering interview is to make choices about the complexity of the case.

Ms. Olivia Chow: But that hasn't been eliminated from this bill?

Ms. Jennifer Irish: No, that's correct.

Ms. Olivia Chow: Okay. I just wanted to clarify that.

The Chair: I think we've come to the end, Ms. Chow. I'm very sorry.

Dr. Wong is next. Thank you.

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

Thank you, Mr. Minister.

I definitely have had a lot of positive feedback from my communities regarding this reform.

You've just indicated your willingness to compromise in a number of areas. I have two questions, so maybe you'd like to answer them together.

Would the government still be able to deliver balanced and fair refugee reform as a result of the kind of compromise you're making? Secondly, why have you changed your recommendations on the timelines? Does this compromise the speed of the system?

I would like to hear your comments.

Hon. Jason Kenney: Thank you.

Dr. Wong, I would not be recommending the changes if I thought they compromised the basic objective of something that's balanced and something that's both fast and fair. To be absolutely honest with you, I've had concerns from the beginning that the eight-day and 60-day timeframes were possibly too slow to disincentivize false claimants from getting into the system. Let's not forget, that eight days has been changed to 15 days now for the first step, and 60 days has been changed to 90 days now for the second step. If they fail at that RPD, most claimants will then have four months, we estimate, to go to the refugee appeal division. If they lose there, they'll have another four months to go to the Federal Court. So right now we are talking about 11 to 12 months, under the 90 days that we've recommended.

When I look at the European systems, for fast-tracked claimants France has 15 days. It's 10 to 14 days for fast-tracked claimants in the United Kingdom. In Portugal, a country where the current UN High Commissioner for Refugees was Prime Minister, claims from safe countries of origin are considered to be groundless, and people are basically removed in a matter of days if they're found not to have a bona fide claim.

I know this will shock some people, but I'm going to say something that is absolutely a recognized reality: there are some people out there, some false claimants, who are effectively asylum shoppers. There are networks in the migration industry that are aware of the fact that Canada has the slowest-moving system by far now, and I fear that even after these reforms, we'll still have a relatively slow-moving system. So to go beyond what we are recommending I think would be irresponsible, but we've made compromises on this issue in order to try to find a consensus on this bill. As I said, I think the price of no reform would be too high.

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

The Chair: Oh, you have lots of time.

Mrs. Alice Wong: You have also limited your power in relation to the designated safe country of origin. Also, you are proposing advisory panels, to include at least two independent human rights experts. What does this bring to the whole reform?

● (1945)

Hon. Jason Kenney: Under IRPA, as I have just said, there are powers for the minister to designate certain countries for specific purposes: countries for which there's a moratorium on removals; countries concerning which we will accept refugee claims in country; countries that have visa requirements or that don't. All of those powers are given to the minister carte blanche in the legislation —by the way, legislation adopted by the previous government, without any kinds of parameters, any safeguards. It's full ministerial discretion.

It's funny, a Conservative government is in place, and all of a sudden people from the previous government say there's too much power for the minister, so we need to limit it. In the spirit of compromise, we say fine. We're not seeking to do anything we think is unreasonable here. What we're seeking to do is provide a limited, discrete ability to address large waves of unfounded claims from demonstratively safe countries that provide protection to their people. In the amendments we're proposing, the process, the committee, which will include outside external membership from human rights NGOs, which will make reference to the UN High Commissioner for Refugees, which will only look at countries, based on the regulations that we've suggested—and this was an opposition idea—from which have arisen 1% of asylum claims in one of the previous three years.... Only those countries will be considered, and the minister will be bound to accept the committee recommendations. He won't be able to go outside them.

I think this addresses the concerns that we heard from some stakeholders and some parliamentarians about “too much ministerial discretion in the designation process”. It certainly goes a lot further than any other country designations that had been proposed in IRPA by the previous government.

Mrs. Alice Wong: My other question is about introducing amendments that would allow people to withdraw their refugee claim prior to hearings before the Immigration and Refugee Board to make an application for humanitarian and compassionate consideration, provided they do so before the hearing at the refugee protection division. I think this is another big amendment to your proposal. Can you explain this to us further?

Hon. Jason Kenney: What we proposed in the original Bill C-11 is what's called a bar on concurrent claims. Sometimes people come in on a manifestly false asylum claim and will double their chances: on advice of counsel, they'll file an asylum claim and will file a humanitarian and compassionate claim concurrently. What we've been saying in Bill C-11 is that you have to choose whether you're a refugee or whether you fall outside the definition of a refugee but still believe you have extenuating circumstances that should be considered by an immigration officer through an H and C application. So we said, you choose.

Now, some people have come to us and said, well, people might make the wrong choice. Somebody might end up in the asylum stream, even though the nature of their problem isn't really about persecution, doesn't really meet the statutory definition of a refugee, in which case we shouldn't penalize them but should allow them to move over to the stream in which their claim would be better considered. That would be before an independent, unfettered decision-maker in CIC, on humanitarian and compassionate grounds.

I call it a bridging amendment. It allows people who get into the asylum queue to, before their hearing, move over to the humanitarian and compassionate queue. It allows more flexibility to make sure that people, once they have counsel, get into the right stream for their case.

The Chair: Thank you, Ms. Wong.

Mr. Karygiannis, you have five minutes, sir.

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

Minister, in looking at the figures and the number of refugees who were applying and the number of people you were processing, one sees that in 2006 there were 22,000 refugees, in 2007 there were 28,523, and in 2008 there were 36,300. Yet the processing of the refugees went down. One comes to the conclusion that the system was starved of IRB members to work with the people applying for refugee status and that this is why we grew this big backlog.

Am I correct?

● (1950)

Hon. Jason Kenney: No, you're not, Mr. Karygiannis.

I've addressed this many times. When our government came into office, we inherited a backlog of 20,000 cases. The average size of the backlog in the past decade is 40,000 cases. Since we came into office, between 2006 and 2009 there was more than a 70% increase in the number of asylum claims—you've just gone through those—from 22,000 to 36,000 cases by 2008. So a large portion of the backlog is attributable to the increase in the number of claims above and beyond the fully funded and staffed capacity of the IRB to finalize 25,000 claims a year.

You are right in one respect. There was a short-term—about an 18-month—shortfall in IRB decision-makers as a result of the transition to the current, more rigorous pre-screening process for GIC appointees to the RPD, which left a shortfall in decision-makers.

Since I became minister, I have either appointed or re-appointed 101 members to the IRB, all of whom have gone through the rigorous pre-screening process. I can tell you that these are people who have met a very high standard. Over 90% of the applicants through the pre-screening process are screened out and are not even recommended to me.

Hon. Jim Karygiannis: Minister, I'd like to share other numbers with you, if I may—

Hon. Jason Kenney: So we have better-quality appointments, but it's true, about a third of the current backlog is attributable to that factor.

Hon. Jim Karygiannis: Minister, there are a couple of other numbers that I'd like to share with you. In 2001 there were 44,734 people who applied; in 2002 there were 33,458; in 2003, 31,000; and in 2004, 25,000. The cases that were finalized were 27,000, 35,000, 45,000, and 35,000. Under your stewardship, sir, there were 17,000, 14,000, and 20,000 that were finalized. This is under the Conservative stewardship.

Hon. Jason Kenney: Again, Mr. Chairman, we can have fun with numbers. The reality is that—

Hon. Jim Karygiannis: No, Minister, could you answer the question—

The Chair: Mr. Karygiannis, you've asked a question. The minister is entitled to answer it. Please let him do that.

Hon. Jason Kenney: The reality is that there is a systemic problem, and anyone who is denying that is not familiar with the issue. There's an average size of backlog of 40,000 cases. The average wait time over the past decade has been a year or more to get to the RPD, under Liberal governments, under Conservative governments.

There are sometimes huge spikes in claims. When Mr. Coderre was minister, they were coming from the United States. He responded through the safe third country agreement. There were spikes under our government from Mexico. We responded with visa impositions.

Sometimes governments have addressed this through an increase in resources; you're absolutely right. The previous government, for a two-year period, had a short-term injection of resources that increased the number of finalizations. And guess what happened? As soon as that was over, the backlog went back up, the processing times went back up, and there was another wave of claims.

So we can do what Bill Clinton defined as insanity—repeating the same thing over and over again, expecting a different result—or maybe we can take a step back and say that maybe the system needs to be reformed.

Hon. Jim Karygiannis: Minister, is the problem resources that we need versus a list? We have had people come in here, witness after witness, and they all said that as far as the designated countries were concerned, they were in doubt that it worked. You're saying—

Hon. Jason Kenney: Thank you. We're—

Hon. Jim Karygiannis: No, Minister, I haven't finished. Allow me my time.

You're saying that if we're going to propose some changes based on what we heard, or if we're going to propose any amendments, you're going to pull the bill. I'm wondering why we brought all these people in and why we spent all this time to listen to them, if the minister steps in front of the committee and says, if you're not going to play my game, I'm going to take my ball and go home. This is what you're saying, Minister.

The Chair: Your time is up, Mr. Karygiannis.

Hon. Jim Karygiannis: You're saying that if we don't play your set of marbles, then you're going to take your marbles and go home.

Hon. Jason Kenney: No, it's the opposite of what I'm saying, Mr. Chairman. I haven't heard a single word of acknowledgement from Mr. Karygiannis about major substantive amendments that we have made to this bill, to the draft regulations with respect to anticipated procedures at the IRB, because of recommendations from the official opposition.

You say you don't think this safe country system will work? Your leader, sir, disagrees with you. He says there are a number of countries in the world from which we cannot accept a bona fide refugee claim, because you don't have cause—

Hon. Jim Karygiannis: Chair, on a point of order, I did not say that it won't work. I said that witnesses told us that it won't work. Maybe the minister needs—

The Chair: That's not a point of order.

We're going to move to Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Thank you.

I think everyone agrees that we need to speed up the process and have the tools that will allow us to fend off the waves of illegitimate claimants. However, we cannot seem to agree on what is fair and even on what is effective.

Personally, I do not believe that having a list of designated countries is an effective way to deal with the problem. Rather than having their cases processed by an expert appeal division, as part of a tribunal whose very function serves that purpose, claimants will have to appeal to the Federal Court, as is now the case. That isn't such a far-fetched consideration, since you have provided the addition of four judges at the Federal Court, pursuant to section 41 of your bill. As you were in the process of preparing your bill, you knew that it would lead to an increase in the number of challenges before the Federal Court.

Would it not be better to implement a non-discriminatory process, simply to speed up the current process and ensure that people have full access to the Refugee Appeal Division rather than having to file an appeal at the Federal Court? That process is much more onerous, long and costly than having an appeal division.

● (1955)

Hon. Jason Kenney: Allow me to clarify one thing, Mr. St-Cyr. We do indeed expect an increase in the number of cases submitted to the Federal Court, for the simple reason that the new system will process a greater number of cases. We will be adding resources. We will, therefore, have the new system as well as a strategy to deal with the backlog.

We are expecting to process 28,000 files per year. We estimate that all unsuccessful claims will result in requests for authorization to appeal to the Federal Court. However, we expect there will be a decrease in the number of requests for authorization granted by the Federal Court because of the creation of an appeal division. We expect that the Federal Court will dismiss a greater number of those cases.

Mr. Thierry St-Cyr: When people will ask the Federal Court to intervene because they will not have been given a right of appeal given their country of origin, the Federal Court might be inclined to conduct more regular checks of how the process is working. In fact, it will not have the impression that due process was followed, and that everyone has the same opportunities and rights.

Furthermore, you spoke about conducting interviews, thus adding another step. That to me appears to be unproductive. When I introduced Bill C-291, I remember your saying that we had to stop adding extra steps. Up until now, people filled out a form, which was dealt with directly during the hearing stage. Now, you want to add an interview stage earlier in the process.

Do you not think that the interviews will further slow down the process rather than expedite matters?

Hon. Jason Kenney: No, we believe it will speed up the process. For clearly well-founded cases, it will be possible to set a hearing date earlier than the current 90-day timeframe. Many steps, including case preparation, which requires time from the Refugee Appeal Division, will be addressed during the preliminary interview. We believe that is one of the effective elements of the proposed system.

[*English*]

The Chair: Thank you. I think the time has come to say goodbye.

Mr. Minister, thank you to you and your colleagues for coming to speak to us tonight. I hope you wish us well with the rest of our deliberations.

Hon. Jason Kenney: Oh, yes, I do.

The Chair: Thank you.

We will suspend.

● (Pause)

● (2000)

The Chair: Ladies and gentlemen, we're moving into the final hour of our hearings this evening, and we have two groups of witnesses as guests tonight. We have the Immigration and Refugee Board of Canada and the Canada Border Services Agency.

Representing the Immigration and Refugee Board of Canada we have Simon Coakeley, who is the executive director, office of the executive director. That doesn't make sense, but that's what I read. We have François Guilbault, who is the senior legal adviser. Good evening to you, gentlemen.

And representing the Canada Border Services Agency, we have Mr. Peter Hill, who is the director general, post-border programs; and we have Mr. Reg Williams, who is the director of inland immigration enforcement, greater Toronto area region. And finally, we have Ms. Leigh Taylor, who is the senior general counsel. Lady and gentlemen, welcome to the committee.

Each of you will have up to seven minutes to make a presentation, and then the committee members will have some questions.

So we'll start with the Immigration and Refugee Board of Canada. Again, thank you for coming.

● (2005)

[*Translation*]

Mr. Simon Coakeley (Executive Director, Office of the Executive Director, Immigration and Refugee Board of Canada): Thank you, Mr. Chair.

Good evening, ladies and gentlemen.

Thank you for inviting me to come today to speak with you. My name is Simon Coakeley. I was appointed to the position of Executive Director at the Immigration and Refugee Board of Canada, the IRB, in September 2008. As executive director, I am the most senior public servant at the IRB.

The board's adjudicative support and corporate services staff report directly to me, and I report directly to the chairperson. As mentioned, I am accompanied by François Guilbault, who is here today in his capacity as a senior legal advisor to the IRB. Mr. Guilbault has extensive experience with the Board and is very familiar with the legal aspects underpinning the IRB's operations. He would be pleased to answer legal questions related to Bill C-11.

I trust you have received the submissions from the IRB following Mr. Goodman's appearance before this committee on May 6, 2010. As requested, we provided statistics on refugee decisions, our GIC member complement as well as information on the salary ranges for governor in council appointees and the rates of pay for the current public servant decision-makers in the Immigration Division. And finally we provided a link to the Public Service Commission's report on its audit of the IRB, which includes its recommendations and the board's response.

You have expressed a strong interest in the IRB's approach to the staffing of public servant positions in the new Refugee Protection Division, the RPD. To assist in your deliberations, we have also provided the committee with a copy of a letter the chairperson, Mr. Goodman, recently sent to Maria Barrados, President of the Public Service Commission (PSC) regarding staffing plans and priorities in preparation for the implementation of Bill C-11.

In his letter, Mr. Goodman emphasizes that, while the timing of the coming into force of the new legislation is not yet certain and the IRB has not yet developed detailed staffing strategies, it is clear that passage of the bill will require a major realignment in our personnel over the next couple of years. In addition to the establishment of a new RPD and Refugee Appeal Division, this realignment will necessitate significant changes to some existing IRB roles.

The chairperson advised the PSC that, in implementing these changes within the proposed timeframes, the IRB will need to use the full range of available human resources actions, including internal and external competitive processes, assignments and secondments, deployments and appropriately justified non-advertised processes. In doing so, the board will respect all of its obligations under the Public Service Employment Act, the Public Service Labour Relations Act, applicable collective agreements, as well as the PSC core and guiding values of merit and non-partisanship, fairness, access, representativeness and transparency.

Over the past few weeks, the IRB has watched with interest witnesses who have appeared before this committee, and we have noted the comments that have been raised regarding the hiring of public servant decision-makers in the new RPD and whether or not they will be independent.

I feel it is important for me to reiterate the commitments made by the IRB chairperson before this committee, i.e., to ensure that the public servant decision-makers of the new RPD will be just as competent and independent as our GIC members are today.

The board will continue to employ a rigorous merit-based screening process, in which all candidates will be evaluated on their skills and abilities against various competencies such as: written communication, conceptual thinking, decision-making, judgment, analytical thinking, oral communication, information seeking, organizational skills, orientation, self-control and cultural sensitivity. This highly comprehensive staffing approach will ensure that only suitable and qualified candidates will be hired.

Current IRB decision-makers come from all segments of Canadian society. They include adjudicators or mediators at other tribunals, teachers, community leaders, lawyers, as well as other federal public servants and people with experience working in international humanitarian organizations. This type of diversity ensures that all members bring unique perspectives to their role as decision-makers, and this makes our adjudicative system stronger.

In order to ensure that we continue to benefit from such diversity within our group of decision-makers, we will proceed with simultaneous recruitment drives both inside and outside the public service, as Mr. Goodman indicated two weeks ago.

● (2010)

Once hired, all decision-makers, whether GIC appointees or public servants, will be provided with an extensive, world-renowned training program. The IRB training program is recognized internationally, as well as by the Federal Court of Canada and the Auditor General, for its thoroughness and professionalism. In addition, new members' performance during the orientation and training period will be assessed before they are permitted to preside over hearings on their own, with additional customized training provided where necessary.

The public servant decision-makers of the new RPD will be subject to the same code of conduct that applies to GIC and Immigration Division public servant decision-makers currently. The code establishes the standards of conduct that govern the professional and ethical responsibilities of members of the Immigration and Refugee Board of Canada, as decision-makers of a quasi-judicial administrative tribunal. New RPD decision-makers will be bound by this same code of conduct.

The fact is that we already have an Immigration Division that is staffed by independent public servant decision-makers, and we have every confidence that we have the tools, practices, mechanisms and training in place to ensure that this adjudicative independence will continue as we transition to the new system.

[*English*]

As you heard from Mr. Goodman, when he was here on May 6, the IRB began preliminary implementation planning immediately following the tabling of Bill C-11 at the end of March.

To briefly bring you up to date, the week before last, a group of IRB personnel met in Toronto to start mapping out the new process that would need to be put in place from the referral of a claim to the RPD decision, with a particular focus on how the interview function would work. A similar group met in Ottawa last week to do the same thing for the new RAD processes. A lot of good ideas were generated, but it's still too early for us to make final decisions on which ones we will actually implement, because we are fully aware that the details of the legislation may be amended.

For us, the real work to prepare for implementation can only get under way once Bill C-11 receives royal assent in Parliament and transition funding is released. At that point, we will develop rules, finalize work descriptions and accountability profiles for all of the new positions to be created, launch staffing processes, secure office space, and so forth.

I'd like to take a minute to touch briefly on the rule-making process. Rules are one type of policy articulated by the board. Rules, like regulations, are binding. The rules will establish the procedures that must be followed in the refugee protection division, including the timelines for the information-gathering interview and the first-level hearing.

For example, the rules will establish such details as how and when documents are to be provided by the claimant to the RPD and vice versa and the roles and responsibilities of IRB personnel supporting the adjudicative functions. They will also set out the factors that decision-makers will have to take into account when deciding whether to adjourn interviews or hearings at the RPD. Another set of rules will obviously have to be developed for the refugee appeal division.

The process for developing rules includes meaningful consultation with stakeholders and parties appearing before the IRB. In practice, we conduct both internal and external consultations before draft rules reach the stage of pre-publication in part I of the *Canada Gazette* for formal public comment. After that, the rules are submitted through the minister for cabinet approval and final publication in part II of the *Canada Gazette*. Once the new rules are in place, they will become the framework on which we will build the structure for the new divisions at the board.

Very important for us in this process is the ongoing relationship we have with our stakeholders, many of whose members have appeared before you in the last few weeks. We will be calling on our stakeholders and asking them to reach out to their membership to help us effectively structure our new processes.

In fact, we already have a meeting scheduled with our national stakeholders group, which includes the CCR, CBA, AQAADI, UNHCR, and others. I can assure you that Bill C-11 will be on the agenda.

There are a couple of points that were raised in committee last Thursday that I would like to briefly address.

Mr. Goodman stated publicly that we will provide a digital record of the interview to the claimant. At this point, it's too soon for us to indicate whether it will be a CD, a USB, a flashcard, or some other format.

The other point is that the IRB would have discretion to adjourn a proceeding for a vulnerable person or for operational or other valid reasons, such as fairness. In fact, one of the benefits we've identified for an early interview is the possibility of identifying vulnerable persons earlier in the process so that they can be appropriately accommodated.

In closing, I'd like to touch briefly on the minister's statement earlier this evening that amendments would be introduced that would see the PRAA function moved from CIC to the IRB. We believe that RPD decision-makers will be well placed to carry out this function, given their access to a world-renowned training program, legal support, and a high-calibre research capacity. But of course we await Parliament's direction in that regard.

As the minister has also indicated, letters have been exchanged between CIC and the IRB with regard to the suggested changes to the timelines for the information-gathering interview and the initial RPD hearing. Mr. Goodman indicated that we will give serious consideration to the proposal of 15 and 90 days, along with other proposals that may arise during our stakeholder consultations as part of the rule-writing process.

Finally, I'd like to quote Mr. Goodman's commitment, and this is what he said to you when he appeared last time:

> The IRB will deliver, to the best of its ability, on the requirements of the legislation as determined by Parliament, and we will do so within the timeframes given and within the budget allotted, fulfilling our mandate to resolve cases efficiently, fairly, and in accordance with the law.

Thank you very much.

● (2015)

The Chair: Thank you, Mr. Coakeley.

Mr. Hill, it's your turn.

Mr. Peter Hill (Director General, Post-Border Programs, Canada Border Services Agency): Thank you, Mr. Chair and honourable members.

I'd first like to talk about the challenges that are currently faced by the CBSA in conducting removals, and then I'd like to describe how the proposed reforms and funding would provide some needed solutions.

In the current system, when a person makes a refugee claim in Canada a removal order is issued against that individual. The removal order is unenforceable until after the determination of their refugee claim. After a negative refugee determination decision, the removal order becomes enforceable and the person is required to leave Canada.

Prior to removal, individuals may seek judicial review of their negative refugee determination. An application for leave to the Federal Court for judicial review of a negative refugee determination decision results in an automatic stay of removal until a decision is rendered. So for failed refugee claimants who apply to the Federal Court within prescribed timelines, the CBSA cannot enforce the removal order until the court has had an opportunity to consider the decision made by the Immigration and Refugee Board on their claim for protection.

Failed claimants are also entitled to a pre-removal risk assessment; humanitarian and compassionate consideration; and, potentially, temporary resident permits. Pre-removal risk assessment applications and applications for humanitarian and compassionate considerations are administered by Citizenship and Immigration Canada staff, and the Minister of Citizenship, Immigration and Multiculturalism also has the authority to examine humanitarian and compassionate considerations on his or her own initiative. Each of these recourse mechanisms represents a decision point that could be judicially reviewed, and in turn delay removal.

Once a removal order becomes enforceable, the CBSA has a statutory obligation under the Immigration and Refugee Protection Act to remove that person from Canada as soon as reasonably practicable. It is often challenging to execute removal orders, since people facing removal may have no desire to comply.

The decision to remove someone from Canada is not taken lightly. The CBSA ensures that the right to due process is respected in each removal case before proceeding. Once individuals have exhausted all avenues of recourse, they are expected to respect our immigration laws and leave Canada on their own accord, or face removal by the agency.

In an effort to avoid removal, failed refugee claimants will often go underground to evade detection by the agency. The CBSA works with law enforcement partners at all levels of government to locate absconders, but the strong desire of many failed refugee claimants to remain in Canada means that ensuring that these individuals appear for removal is often challenging. The agency currently has an inventory of over 40,000 immigration warrants, 38,000 of which are for failed refugee claimants.

One of the greatest challenges to removals is the failure of claimants to provide a travel document. Because lack of travel documentation can defer removal indefinitely, the individual may have little incentive to provide existing travel documents or assist the agency in securing new travel documents. Consequently, the agency faces challenges in meeting the requirements of consular officials for granting new travel documents. Even when the individual's identity is not in doubt, some countries are not cooperative in issuing travel documents.

Where all administrative and judicial recourses, such as the pre-removal risk assessment and an application to the Federal Court, have been exhausted and a travel document is available, the subject may still request that the CBSA enforcement officers defer their removal date on an administrative basis. A common reason for CBSA enforcement officers to defer removal is that a medical reason precludes that person from travelling. Officers are obligated to consider every request, and where an officer refuses a deferral request, the applicant must be provided with the decision and the supporting rationale in writing. This decision may also be judicially reviewed by the Federal Court.

The cumulative result of these processes is a refugee system that allows failed claimants to avoid removal for years. The situation appears to be a draw factor for individuals not in need of protection, and it is also apparent that the longer an individual stays in Canada, the more difficult it may be to remove him or her, because they become established here.

Currently, there are more cases entering the enforcement stream than the CBSA is able to remove. The agency must prioritize removal cases based on risk. As the protection and safety of Canadians is a top priority for the CBSA and the Government of Canada, the cases involving individuals who are determined to be inadmissible on the grounds of security, organized crime, crimes against humanity, and serious criminality are handled first. Next in terms of priority are removal cases involving criminality, failed refugee claimants, and others who do not comply with the Immigration and Refugee Protection Act.

● (2020)

Consequently, although failed refugee claimants represent the largest volume of cases in removal inventories, the need to remove priority cases means that the agency is unable to address all cases in the inventory. Despite removing an average of over 9,000 failed refugee claimants a year over each of the last five years, the removals inventory remains quite large, a fact that the Auditor General has noted with concern. The agency shares the concern of the Auditor General, and the proposed new system would allow the CBSA to effectively and efficiently address this issue.

Under the proposed new system, the objective would be to remove failed asylum claimants within 12 months of the final decision of the immigration and refugee appeal division. The role of detentions and removals under the proposed measures would continue to be vital. Timely removal following a final negative decision on a refugee claim is crucial to the success of a reformed asylum system.

The introduction of a one-year bar on post-claim recourses would provide the CBSA a new policy and legal framework that would allow the agency to remove more failed claimants, and remove them in a shorter timeframe. By temporarily barring these mechanisms, duplication and redundancy of the current system and the resulting vulnerability to abuse would be significantly mitigated. As a result of faster decisions and limits on post-claim recourses, the agency expects greater success in the removal of failed claimants. Over the longer term, faster decisions and timelier removals are also expected to deter claims from individuals not in need of protection, resulting in a reduction and removal of pressures.

An assisted voluntary returns pilot program, which would be delivered exclusively in the greater Toronto area, is a key component of the reform package. The pilot would run for four years. It would consist of two phases. The first phase would be for failed claimants who are being returned to Mexico, the Caribbean, and Central and South America. And the second phase, again delivered through the GTA, would be for failed claimants who are being returned to all other parts of the world. The objective of this proposed program is to fundamentally change the behaviour of failed claimants. The aim is to encourage greater compliance and make the alternative of going underground less attractive.

Too many failed claimants do not respect their obligation to leave voluntarily, and as a result face enforcement action and a permanent bar on returning to Canada. Many are unaware of the consequences of not leaving Canada because they lack information. Others simply don't have the means to effect their own return or to support themselves upon return.

An AVR pilot program would respond to these issues by providing increased education, counselling, and limited financial assistance to support reintegration in their home country. This program is key to the removal strategy. It would achieve both humanitarian and enforcement objectives by encouraging timely voluntary removals. From a humanitarian perspective, voluntary removals would allow failed claimants to return with dignity and anonymity to their home countries.

AVR programs are being successfully employed by our international partners, for example the United Kingdom and Australia. In recent years, for example, in the United Kingdom, approximately 20% to 30% of all of their returns had been through their assisted voluntary returns program. The CBSA anticipates that the proposed AVR program would relieve pressure on our warrant and removal inventories, and reduce the need for extensive, time-consuming, and costly immigration investigations.

There would be strict eligibility criteria for this program, in particular no criminality, adherence to reporting to the CBSA, compliance in obtaining travel documents, and a temporary ban on returning to Canada. The expectation is that this program would significantly expedite the process of securing travel documents required for removal. This program would be delivered in partnership with an independent service provider who would undertake the responsibility for making travel arrangements, including securing documents, which are functions currently performed by the CBSA.

Mr. Chairman, in conclusion, in addition to the cost saving for the CBSA removal program, the Government of Canada, provincial and territorial governments, and taxpayers are expected to benefit from cost savings, as timely voluntary removals reduce pressures on social assistance and health care programs.

Thank you, Mr. Chair. I look forward to trying to answer your questions.

● (2025)

The Chair: Thank you, sir.

You both took more than seven minutes, but what you have to say is very important and we appreciate your coming.

Monsieur Coderre has some questions.

[*Translation*]

Mr. Thierry St-Cyr: I too have important things to say. This will take a few minutes.

Hon. Denis Coderre: I also have a lot to say so I will take 20 minutes.

Thank you, ladies and gentlemen, for coming today. Your role is not an easy one because you are responsible for applying the law, which is not always straightforward. We won't therefore get into politics together. However, I do have some very specific questions to ask you.

Mr. Coakeley, there are those who have questions about how this will be applied. How will it work?

I am absolutely in favour of this. I do not have a problem at all with having public servants on the front lines in order to assist with situations. Obviously everything will depend on training—and at the time, we already discussed this. However, there has to be justice and the appearance of justice being done.

In your opinion, what will be the skills required of these people and what kind of flexibility will there be? Do you want to make sure that these people will be lawyers? You do have to set certain criteria. Perhaps you have already thought about this: what kind of people would this first stage involve?

Mr. Simon Coakeley: As I tried to explain earlier, we will be using the same selection criteria that are currently used for individuals who are appointed to the Refugee Protection Division by the governor in council. There's a whole series of skills that have already been established—I mentioned a few of them.

Currently, legal training is not required for our decision-makers. Obviously legal training can be an asset but it is not essential. As I stated, these individuals may be teachers, they may work for not-for-profit organizations, they may be nurses, people with all kinds of training, with all kinds of backgrounds. These are individuals who already work in the Refugee Protection Division.

We will use the same kind of criteria. I should point out that not all these criteria have been selected yet, nor all the details, but the system has already been set up. We're using more or less the same criteria and applying them to the selection—because there is no training, obviously selection is very important—of individuals who will be appointed to the new Refugee Protection Division.

Hon. Denis Coderre: I wanted to talk about Pharès Pierre, but I won't—people will understand.

Mr. Coakeley, what will be of utmost importance in my view, if we want to be able to move faster or even better, is that the committee be independent. The Immigration and Refugee Board is an appeal division, therefore there can't be any communicating parts. In other words, the board hears a case, and then there is an appeal. That's the thin red line; this will be important.

What's your opinion on that? If you use the same appointment methods, then you may have the same reflexes. It may also end up being the same people. Do you see where I'm going with this?

Mr. Simon Coakeley: Yes.

The selection processes have to be different because the new Refugee Protection Division will be relying on a selection process that is subject to the Public Service Employment Act. Members appointed to the new Refugee Appeal Division will always be appointed by order in council. So the current system that we're familiar with for individuals who are appointed—

Hon. Denis Coderre: So it will be a sort of hybrid system.

Mr. Simon Coakeley: With respect to individuals appointed under the Public Service Employment Act, it is our intention to use what we already do for the decision-makers, but not necessarily copy the process completely.

Hon. Denis Coderre: I have two quick questions and then Mr. Karygiannis has a question to ask.

We hear all kinds of things about the deliberations. What I am concerned about is a lack of sensitivity that may be due to a lack of knowledge. When you appear for the first time, for humanitarian or compassionate reasons, the same agents are there. They have not all read the Supreme Court case law. There may be people who experienced problems for religious reasons.

You had some of those cases. When an information officer, who represents the system—because this is a type of delegated authority—is issuing a visa—it is sort of the same thing—to an individual they are seeing for the first time, they will already be determining whether that applicant should be a refugee or not. Afterwards, if it does not work out, the case moves on to the Immigration and Refugee Board of Canada. How can you ensure that... Dignity and timing have frequently been mentioned but sensitivity will be very important as well because of political realities.

I have a second question. Let's say the minister makes a statement—because he talks a lot—and he says that it does not make any sense to have a refugee application from someone who is Japanese because Japan is a safe country. I am not asking you to talk about Japan but you understand what I am saying. So if the front line is made up of official agents and one reads in the newspaper that a man coming from a certain country requested refugee status, how will you deal with that? Let's not forget that the minister wants to draw up a list, which I am not in favour of.

● (2030)

Mr. Simon Coakeley: I will ask Mr. Guilbault to speak a little later about training, especially the legal training that we provide our decision-makers with.

Hon. Denis Coderre: Fine.

Mr. Simon Coakeley: With respect to the last part of your question, our immigration division is already quite independent and its operations are carried out by civil servants. I can guarantee that quite often the Border Services Agency does not agree with the decisions that our decision-makers make. That is the reality.

The Immigration and Refugee Board is not part of the Department of Citizenship and Immigration. It is an independent administrative tribunal. Mr. Goodman, the chair, does not answer to the minister but rather to Parliament through the minister. Our organization is independent and I think that its history testifies to that.

If there is any time left I will ask Mr. Guilbault to speak to training.

Hon. Denis Coderre: Yes, quickly.

Mr. François Guilbault (Senior Legal Advisor, Immigration and Refugee Board of Canada): During our training we make sure that each decision-maker is able to fulfil his or her duties as skilfully as possible. That obviously means that they have to be able to express empathy with asylum seekers who are more vulnerable than other individuals appealing to the administrative tribunal. Rest assured that we will continue to ensure that each decision-maker, new or not, will continue to display the requisite empathy for asylum seekers.

With respect to the independence of these individuals, once again rest assured. All decision-makers are independent. Independence, from a legal perspective, means the absence of any undue influence. Whether the individuals are appointed by order in council or whether they are civil servants, we make sure that each decision-maker has sufficient independence to be able to make decisions that are consistent with the law.

[*English*]

The Chair: Thank you.

Monsieur St-Cyr.

[*Translation*]

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

Committee members received correspondence that was exchanged between you and the minister. This correspondence dealt with timeframes under the regulations. It is quite interesting to see that the minister addresses his requests to you and suggests that you include certain time periods rather than others in the regulations. On the other hand, this is an example of the independence you spoke about, that is that you will be the one adopting regulations with respect to time periods. However, this also shows that regardless of the discussions that take place within this committee on the bill, there is no guarantee that the time periods members will agree on will be those that are retained.

Am I mistaken?

Mr. Simon Coakeley: Pursuant to Bill C-11, the tribunal sets the timeline, under the tribunal's rules. As I explained earlier, we have a consultation process for any new rule that the tribunal seeks. This includes consulting interested parties, for example the Canadian Council for Refugees, lawyers, the Quebec Immigration Lawyers Association, and the UN High Commissioner for Refugees. And we will consult them. We know that they have made presentations to this committee.

You know about this exchange of letters. We accept the information or the department's recommendations, but we have to undertake our own consultations before proposing any rules setting out any figure.

● (2035)

Mr. Thierry St-Cyr: So, as parliamentarians, if we want to ensure a minimum wait time for problem cases, we would have no choice but to include it in the act, pure and simple. Otherwise, it would depend on the result of your consultations and this could eventually change, depending on the concerns of the moment.

Mr. Simon Coakeley: I will ask my colleague to answer, since this is a question of a legal nature.

Mr. François Guilbault: I totally agree. If legislators want to reduce timelines to a minimum, it would be preferable that they indicate the minimum processing time of a hearing. If legislators want the chair to set rules on timelines, as is the case in the current act and bill, then the chair, in consultation with interested parties, would have to set out these timelines.

Mr. Thierry St-Cyr: Your department does include a legal tribunal. There is an administrative aspect to this tribunal, in that you have to manage your workforce, personnel, rooms, etc. You have to be able to forecast the number of claims that will come in, that will be processed, and that will go back out again.

The minister has often told us that this new system will allow us to more quickly deport fraudulent claimants and that it will in fact discourage fraudulent claims. What it does not say, but we can assume, is that under the same logic, this system will also allow us to more quickly process legitimate claimants. Indeed, if illegitimate claims are processed quickly, this should also apply to legitimate claims. Legitimate claimants should therefore be more numerous in applying for refugee status in Canada, knowing that their claim will be dealt with quickly.

Have you estimated the additional volume of claims this will represent?

Mr. Simon Coakeley: We do not believe that we can competently make forecasts regarding this new system. We can make projections under the current system, but due to all the factors that you have mentioned and over which we have no control or experience, we cannot really make projections. So it is the Department of Citizenship and Immigration that adopted and presented projections when it implemented its new policy.

Mr. Thierry St-Cyr: How do you determine the minimum time period needed to provide efficient service if you have not been able to forecast the volume of claims?

Mr. Simon Coakeley: We have accepted and used the forecast made by Citizenship and Immigration, which believes that, under the new system, we will receive about 22,500 claims per year. And so our calculations are based on this figure.

Mr. Thierry St-Cyr: Eventually, if Canada receives more claims due to its processing speed, this will in fact slow down the process and you will have to readjust your timelines.

Mr. Simon Coakeley: Indeed, if the number is far superior to 22,500, we would then need more resources in order to maintain the same timelines.

Mr. Thierry St-Cyr: All right.

As regards staffing, various witnesses who appeared before this committee told us that a process similar to that used by the Chief Electoral Officer to appoint returning officers would be more appropriate. We are told that this model would be more useful than the general public service staffing model.

Do you agree with me on this point? What do you think of this proposal?

Mr. Simon Coakeley: As I indicated, and as also indicated by Mr. Goodman when he answered your question the last time, we did plan on using a hybrid process. There would be a process open to existing public servants, but another for the general population.

From a practical point of view, when we announce a position open to those outside of the public service, even only for 24 or 48 hours, we receive 1,000 to 1,500 applications, sometimes even more. Obviously, we couldn't advertise a decision-maker position at the Refugee Protection Division for just 24 hours.

So, if we have to run a competition open to those outside the public service exclusively, we would expect to get about 5,000 applications. We would have to find a way to whittle this number down. We can't run 5,000 interviews or administer 5,000 tests. Another aspect of this problem is that it would have a negative impact on existing staff because they would think that we don't have confidence in them.

We will maintain our staff's productivity as long as the current act is in force, in order to not go to the new system with a tremendous backlog.

The other problem—

● (2040)

[*English*]

The Chair: You have to conclude soon.

Mr. Simon Coakeley: Two seconds.

The Chair: You have two seconds.

[*Translation*]

Mr. Simon Coakeley: The other problem would be that we would have to repeat the whole process every time there is a vacant position in future, in other words we would have to interview 1,500 people for every open position.

[*English*]

The Chair: Thank you, sir.

Ms. Chow.

Ms. Olivia Chow: To Mr. Hill, CBSA had an audit and at that time the auditor said that you needed a better computer system program to track where people are, who they are, etc. Do you have the funds now in your budget to have such a tracking program, the IT program?

Mr. Peter Hill: Thank you.

You're referring to the 2008 report from the Auditor General.

Ms. Olivia Chow: That's right.

Mr. Peter Hill: Indeed, this proposal would provide sufficient funds for the system that had been identified as lacking previously—the national case management system—in order to manage the cases consistently nationally as well as to track the cost of removals cases. So the short answer is yes, this proposal would address that requirement.

Ms. Olivia Chow: How long will it take, once you have the funds, to ramp up, get the IT system in place? Because it's notoriously hard to find a good one, and sometimes it can be a money pit, as we've seen in other departments—eHealth in Ontario, and there are other examples. How long would it take for you to get the system that would meet your expectations, for example?

Mr. Peter Hill: We're not starting from scratch. We have done what we have been able to do in terms of building a better system with available resources, so in the last couple of years we have taken steps to incrementally build our capacity. The projections for the funding here are over five years. It's difficult for me to say when that system would be fully mature, but I would anticipate within the three to five-year timeframe, and even before that, we would have improvements with our system's capacity, our information management capacity, that would allow us to meet the requirements of the new system.

Ms. Olivia Chow: Right now, I know you don't really track—maybe you do—who is detained, and whether they are men, women, or children, and if some are Canadian, some are not, especially the children, and how many are detained, how many are removed. Do you actually track those numbers? Because I recall I asked a specific question as to how many Canadian-born children are in fact detained and subsequently removed, and the information I got back was that CBSA does not track that information. Am I wrong on that?

Mr. Peter Hill: Do we track the number of Canadian-born children in detention centres?

Ms. Olivia Chow: Yes, and then subsequently removed—per year, let's say.

Mr. Peter Hill: I don't think the number would be very high. Perhaps I could turn to my colleague and he may have some new information.

Ms. Olivia Chow: Thank you.

Mr. Reg Williams (Director, Inland Immigration Enforcement, Greater Toronto Area Region, Canada Border Services Agency): Canadian citizens are never removed. They always accompany the person who is subject to removal.

Ms. Olivia Chow: Right, yes.

Mr. Reg Williams: We do in fact track the number of Canadian citizen children who accompany the foreign nationals in detention. That figure is relatively easy to get.

Ms. Olivia Chow: Ballpark figure, how many are there? Would you know, by chance?

Mr. Reg Williams: At this time, in our detention centre in Toronto, we probably have about six or seven, and these are all at the request of the custodial parent who wants the child to be with the mother or the father, as the case may be—

● (2045)

Ms. Olivia Chow: At one time.

Mr. Reg Williams: At the detention centre, yes.

Ms. Olivia Chow: So how many, perhaps, in a year?

Mr. Reg Williams: In a year I would say 50 to 60 different children, Canadian citizen children.

Ms. Olivia Chow: And they would then be leaving because their parents are leaving.

Mr. Reg Williams: That's right. The choice is entirely up to the custodial parent to make that decision to take the child or leave the child with a relative or another parent if that parent is a citizen.

Ms. Olivia Chow: If you have a faster program, in terms of turning over people so they don't stay as long, assuming they are not real refugees, would you be able to ask people to leave much faster?

Mr. Peter Hill: Based on....

Ms. Olivia Chow: More staff, more....

Mr. Peter Hill: Based on the planning, that's exactly one of the main objectives.

Ms. Olivia Chow: What percentage of increase can you do? Because I remember there was a huge backlog.

Mr. Peter Hill: We currently remove approximately 9,000 failed refugee claimants on an annual basis, and that number has been fairly stable over the last five years. Under the new proposed system, based on the calculations from Citizenship and Immigration, we're anticipating a requirement to remove about 13,000, so about 4,000 additional failed refugee claimants on an annual basis.

Ms. Olivia Chow: And how long will it take for you to get rid of the backlog? Because I remember the Auditor General's report was that your backlog is really substantial.

Mr. Peter Hill: The backlog is substantial. The funding that is proposed to specifically address the backlog is provided over three years, and that would help to reduce the backlog, but it would not eliminate the backlog. So we're looking forward to the three-year evaluation, the evaluation of the entire program after three years, to have a better understanding of the performance of the removals program and to determine whether funding for the backlog is sufficient to meet the needs of the system.

Ms. Olivia Chow: I remember during that report, it was something like 38 million or something of that nature in 2008. I don't remember. Has it now increased?

Mr. Peter Hill: What is that 38 million referring to?

Ms. Olivia Chow: I have this vague memory that's two or three years old. Was it a figure that had to do with the deportation? Am I way off?

Mr. Peter Hill: I think you may be referring to the number of cases in the removal inventory, and that was about 40,000 cases.

Ms. Olivia Chow: Forty thousand cases, but in terms of dollars.

Mr. Peter Hill: In terms of dollars.... This is part of the difficulty. If you were just to take the traditional approach that we have today under the system and hire more enforcement officers, the cost could be quite astronomical. This is why we've proposed the idea of assisted voluntary returns, because it's more economical and more efficient as well as having other benefits.

The Chair: Thank you, Mr. Hill.

Ms. Chow, unfortunately, your time has expired.

We have Mr. Young.

Mr. Terence Young: Thank you, Chair.

Mr. Hill, what impact will the reform measures have on CBSA's operations and wait times at the ports of entry?

Mr. Peter Hill: At the ports of entry, we do not anticipate any significant impact on the work of our border services officers.

Mr. Terence Young: There will be no significant impact?

Mr. Peter Hill: That's correct.

Mr. Terence Young: Okay, thank you.

How does the refugee reform package address the current removals backlog, and is the number of failed refugee claimants in detention expected to grow as a result of the proposed changes to the asylum system?

Mr. Peter Hill: The proposed funding for backlog reduction would provide significant funds over three years to address the backlog. It would by no means eliminate the existing backlog. The funds provided for the new system will be directed to the new system only, so once the new system is implemented, there will be a last-in first-out approach, so we're ensuring that the new system does not accumulate any significant backlogs. To the extent that we're able to fully address the new system requirements, if there are additional resources remaining, they can be devoted to addressing the backlog.

● (2050)

Mr. Terence Young: Is the number of failed refugee claimants in detention expected to grow as a result of the changes to the system?

Mr. Peter Hill: Currently, we detain about 20% of individuals prior to removal. We anticipate that there would be a commensurate percentage, at 20%, but there would be no increase beyond the current rate that we're experiencing today under the existing system.

Mr. Terence Young: Thank you, Chair. Mr. Dykstra is going to take the rest of my time. Thank you.

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

I just had a question regarding one of the other proposed amendments the minister spoke about, and I think it would be good to get some clarification on that. Could you talk about the transfer of the pre-removal risk assessment function to the IRB, Simon?

Mr. Simon Coakeley: Thank you very much.

It's our understanding that the bill will propose that the pre-removal risk assessment function be transferred to the refugee protection division approximately one year after the coming into force of Bill C-11. It would be our intention to integrate the PRRA function with the RPD function at that point. That's part of why we still have some work to do on our competency profiles and things like that, because we need to integrate those into our thinking before we can come up with our final refugee protection division work description competency profile, etc. Obviously, that would have to be integrated into the training package that would be delivered to them.

Mr. Rick Dykstra: The other aspect of this—and we've had a lot of questions and a lot of comments on this through our hearings—has to do with the information-gathering interview process. I think it's important to get on the record from your perspective how vulnerable claimants would be dealt with, or just a general overview of how the information-gathering interview or process will go for the first interview process.

Mr. Simon Coakeley: I'll deal with the vulnerable persons first, perhaps, and then I'll focus more generally.

Under our existing guidelines, when we identify somebody as being vulnerable there is a requirement to identify a designated representative for them. That would normally be in two situations. One is where the person appearing before any division of the IRB, not just the refugee protection division, is a minor, for example, they would need a designated representative. Now, if they have a family member with them, particularly if it's a parent, normally it would be the parent who is the designated representative—not always, but normally. We can do the math on how old somebody is when the case is referred to us. But the other situation, which is sometimes a little more difficult, is with somebody who has difficulty understanding what's going on. In our current scenario the first time we would come across that would be when they appear before us at a hearing, which, as you know, in some instances could be 18 or 19 months after they've arrived in Canada.

We see the interview as an opportunity to identify that some people will need a designated representative earlier in the process, and this will allow us to trigger the designated representative process much earlier on.

Now, in terms of the interview process—

Mr. Rick Dykstra: Can I pursue that a bit further?

One of the issues we've had in terms of understanding it from a process perspective is that some consider this process to be somewhat.... I don't want to say it's an interrogation, but this is a judicial type of setting.

The way you just described how you're going to help an individual who is a minor or vulnerable, certainly from my perspective—and I think it's important for this committee to understand—is that you're there to look out for the individual in the first circumstance and to try in every way you can to make that a conciliatory process, not one that is seen as an interrogative one.

Mr. Simon Coakeley: No, indeed. We do not see it as an adversarial process, by any stretch of the imagination. We see it as an information exchange process. There are definitely pieces of information we need to obtain from refugee claimants, the sort of information that's currently found in the PIF, the personal information form.

In addition to that, we see it as an opportunity to provide information to the claimant, for example, if they aren't at that point represented. We would expect to work with bar associations in order to be able to provide lists, perhaps of counsel who've indicated they're willing to work pro bono, or for legal aid. We would provide that sort of information. We would hope to be able to provide much more detailed information about how a hearing will take place, the sorts of questions that people might be asked at the hearing, and that sort of thing.

In our current context, people arrive and they often have children with them during the hearing. When they come to the interview we'll be able to tell them what to do when they come to the hearing with their children, so that even though the children have to be there, there's somebody to look after them while the hearing is taking place, for example.

● (2055)

The Chair: Sorry, that's the end. Time's up.

Thank you very much, Mr. Coakeley, Mr. Guilbault, Mr. Hill, Ms. Taylor, Mr. Williams, for coming at such a late hour. You have made a valid contribution to the committee, and we thank you.

Before we adjourn the meeting, ladies and gentlemen, the clerk is going to distribute two things: a package of the amendments from the four caucuses, and the draft regulations, for your bedtime reading this evening.

Unless there's anything else, I'm going to adjourn this meeting until tomorrow, Tuesday, June 1, at 3:30, Room 209 West Block.

The meeting is adjourned.

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