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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (1535)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, ladies and gentlemen.

This is the Standing Committee on Citizenship and Immigration, meeting 22, Tuesday, June 1, 2010. The orders of the day concern Bill C-11, an act to amend the Immigration and Refugee Protection Act and the Federal Courts Act.

This afternoon had originally been scheduled for the committee to review the different clauses in the bill, the clause-by-clause consideration.

We have before us members of the Department of Citizenship and Immigration. I won't introduce them—they've been here so many times—but they are here to offer assistance to the committee on anything that you may wish to pose to them.

As you know, the bells are going to ring at 5:15, so the meeting will end then.

As I understand it, Mr. Dykstra, it's unanimous that we will not proceed with clause-by-clause at this particular time and that members of the committee will have an opportunity to ask the staff questions.

Is that a correct assumption?

Mr. Rick Dykstra (St. Catharines, CPC): It is, Chair. There has been agreement with the four parties that there are some questions, I guess from a technical perspective, that members would like to ask. We've agreed that we will be proceeding, and completing clause-by-clause as we had agreed to with respect to Thursday at 11:59, but that we use this time, or at least some of this time, to allow for all of us to be able to clarify issues that we feel are pertinent from a party perspective as amendments that were put forward but also, probably more importantly, technical issues that need to be responded to.

We have four individuals from the ministry who are more than capable to be able to respond to those questions.

The Chair: Thank you, Mr. Dykstra.

Now, with regard to people debating and discussing, do I assume that there's no rule on time limits?

Mr. Rick Dykstra: Only that we respect each other's time and not—

The Chair: I love respect.

First question, Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): it is not a question. Without limiting the time allowed for questions, we could spend the first hour to study the government amendments—G-3, G-4, G-5 and the others that were recently submitted and that we did not have time to look at—and the second hour to study the transition provisions that were not really discussed during our meetings. I believe that the best procedure would be for us to get a brief presentation of those provisions. Then, we might ask questions which would be mostly technical. If we have no questions, we do not ask any and we do not start a political debate.

● (1540)

[*English*]

The Chair: The reason I asked that question about time limits is that obviously I need guidance. Someone could talk for an hour and three-quarters.

Mr. Rick Dykstra: Perhaps I could suggest that we go with a time limit of 10 minutes. If that's workable, then at least we have something for you to be guided by.

The Chair: There is no unanimous consent.

Questions of the staff...

Ms. Olivia Chow (Trinity—Spadina, NDP): Mr. Chair, would it make sense to actually do it systematically and go through the amendments, starting with the government's amendments? It's long and involved, and it's detailed—

The Chair: You know, this is rather unusual. I thought we were having a clause-by-clause discussion and were going to start at the beginning of the bill and go through and approve clauses where there are no amendments and debate those clauses where there are amendments.

I'll do whatever you people have agreed to, but at this particular point, my understanding from Mr. Dykstra—I also spoke to Mr. Bevilacqua and Monsieur St-Cyr before the meeting commenced—was that members of the committee would be asking questions on probably the government amendments.

Was that the understanding?

So I'll do whatever you want to do, but someone has to tell me what you want to do.

Mr. Bevilacqua.

Hon. Maurizio Bevilacqua (Vaughan, Lib.): Thank you very much, Mr. Chair.

I think the genesis of this decision was that members, I believe on both sides of the House, wanted to have greater clarification on the significance of various amendments. We felt it would be wise for us to use the next couple of hours to ask questions and get a broad sense of direction.

In particular, in the first half, I think we'd like to hear from the officials on the impact of the various government amendments—what they mean, what their impact is on the system, what their impact is on refugee claimants—so that we can get a better understanding.

Going through these amendments, we have found that they have a lot of information packed into them, but we sometimes fail to understand their overall impact, specifically on people, which is really what this legislation is all about—trying to improve the system, but ultimately to protect and wherever possible expand the rights of individuals while having a timely and efficient refugee system.

This is where we are. We'd like to hear from the officials.

We can begin, I guess, with amendment G-3 and have them give us an overview of what it means, both from a system point of view and as to the individual person applying for refugee status here in Canada.

The Chair: Amendment G-3 is on page 24 in your package, if you're following along. There's a package of amendments that may even have been on your desk when you arrived. If not, you got it yesterday.

Mr. MacDougall.

Mr. Peter MacDougall (Director General, Refugees, Department of Citizenship and Immigration): This package of amendments, G-3 through G-12, concerns the transfer of the pre-risk removal assessment from CIC to the IRB. I'll give an overview of the thinking behind or the rationale for the transfer, and then we can get into some specific questions.

The Chair: Okay.

We're going to start with questions. Someone has to ask Mr. MacDougall a question.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): I just want to put my name on the list so that I can ask questions when he's finished.

The Chair: I think he is finished.

Mr. Peter MacDougall: No, I'm going to give you a quick overview.

The Chair: Oh, I'm sorry. There was a pause there, Mr. MacDougall.

Voices: Oh, oh!

Mr. Peter MacDougall: I saw Mr. Karygiannis signalling.

The Chair: All right. You proceed, sir.

Mr. Peter MacDougall: The rationale behind the transfer of risk is essentially based on rationalizing the assessment of risk into one organization. As some of you will recall, this was raised by the standing committee report in 2007, which recommended the transfer of the PRRA function to the IRB. We believe it will realize greater efficiencies; we think decisions will be faster and more efficient.

The reasons for that are the following. The current decision-making model at CIC relies on a single officer doing a tremendous amount of work, from preparation of the file to his or her own research and finally to the decision-making process. Moving this PRRA function to the IRB, whose core business is of course individualized risk assessments, would mean making the same types of decisions, but making them in a way similar to that for a risk decision. Decision-makers at the IRB will be simply making decisions. All the registry work, the research, the analysis, will be done by lower-level officers, and obviously will be focused on decision-making. I can't get into precise numbers, but we believe that it will be substantially faster and that the productivity rate at the IRB will be significantly higher than it is at CIC, for the reasons I outlined.

In terms of the specific amendments, as I said, they've been broken into G-3 through G-12. They are, I agree with Mr. Bevilacqua, very lengthy and very technical.

At this point, I think I'll stop. We can take some questions on some of the specifics.

● (1545)

The Chair: Mr. Bevilacqua.

Hon. Maurizio Bevilacqua: Actually, it's Mr. Karygiannis.

The Chair: Mr. Karygiannis, then Monsieur St-Cyr.

Hon. Jim Karygiannis: Thank you, Chair.

Right now, as it stands, before somebody is removed he has a PRRA. That's handled by either CBSA or the CIC.

Mr. Peter MacDougall: The CIC.

Hon. Jim Karygiannis: The CIC.

However, before the person is removed, if we'd like to intervene or if we must intervene, we intervene with CBSA as well as CIC, and ask for a minister's intervention.

If this gets removed from CIC and goes to the IRB, how would something like that happen? It will be technical. It will be with a body that we have very little contact with, except to find out where the process is. When we contact IRB, we cannot make submissions; we cannot even talk to somebody who's looking at it, as it stands right now. The only thing we can do is to find out when the hearing will be.

So if you move this to IRB and we want to make submissions, wouldn't it be a quasi-judicial body that members of Parliament would have to make representations to?

Mr. Peter MacDougall: I'll ask my colleague Mr. Butt to respond.

Mr. John Butt (Manager, Program Development, Department of Citizenship and Immigration): I think you're right in terms of the impact it would have on representations to the Immigration and Refugee Board, but the starting point for our pre-removal risk assessment is the decision by Canada Border Services Agency that the person is ready for removal. There is a removal order. They have all the documentation. They have flights in progress. The last step is to offer the individual the opportunity to apply for a pre-removal risk assessment.

That part won't change. The person will get the application form from the Canada Border Services Agency officer. Instead of submitting the application to the Department of Citizenship and Immigration, the person will submit their application to the Immigration and Refugee Board.

Hon. Jim Karygiannis: Right, Mr. Butt, but what I'm trying to get to is that right now a member of Parliament or his office can pick up the phone and call CIC and make an intervention, or suggest or even bring to light some recent changes in a country. But in moving it from CIC to IRB, moving it to a quasi-judicial body, how will that affect the member of Parliament's office or the MP getting in touch with the IRB?

Mr. John Butt: If the issue is the information with respect to changed country conditions, that information would be submitted by the applicant to the Immigration and Refugee Board. If the member of Parliament has information that would be pertinent to the individual's case, then as long as he or she ensures that the person is aware, the person can make those submissions in their application to the Immigration and Refugee Board. If you're looking at a suspension or a stay or deferral of removal, you will still be able to ask the Canada Border Services Agency to intervene in that way.

Hon. Jim Karygiannis: Mr. Butt, let me try this one more time. The people who will be making the decision will be IRB members or IRB officials. As such, they're quasi-judicial individuals whom we, as members of Parliament, cannot talk to. If that process is moved from CIC to IRB, would our offices be exempt and be able to talk to them, or would our offices not be able to talk to them because they're quasi-judicial bodies?

● (1550)

Mr. John Butt: I would have to say that you're correct, that they cannot talk directly to the decision-maker. The person would have to make his own submissions, with assistance from the member of Parliament or from counsel, as the case may be. So the information would have to be put through the individual in his or her application.

Hon. Jim Karygiannis: Thank you.

The Chair: Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: Mr. McDougall, you said in your presentation that the IRB procedure for PRRA would be similar. First, you said it would be “identical” but then you corrected yourself and said that it would be“similar”. Obviously, we know that it is not identical since we are talking about the same organization.

Could you ensure the committee that, were we to adapt each component to take into account the fact that cases will be dealt with by IRB instead of CIC, it would basically be the same process, the same rights and the same opportunities? At the same time, should we not use this opportunity to improve the process? There will obviously be things to improve with the process. Are there new elements that would be introduced? If we have to make administrative changes, let us make sure that they are done properly. In that case, what are the improvements that could be made?

[*English*]

Mr. John Butt: Basically, in the current process, where the citizen and immigration officer, acting on behalf of the minister, makes decisions, a lot of the administrative steps in the decision-making process are reflected in the policy manuals of the department. They are not spelled out in the act or in the regulations.

In the future, with a process before the Immigration and Refugee Board, a quasi-judicial tribunal, a lot more of that detail has to be spelled out, and it is the reason why there are extensive amendments in the proposed motions with respect to the process for the possibility that the minister has additional information that should be before the decision-maker, the possibility that the person may be inadmissible on serious grounds that had not been canvassed previously, etc. All of those things have to be built into the system in more detail because the Immigration and Refugee Board will proceed with its hearings in accordance with its legal mandate, so any restrictions or corrections or adjustments have to be spelled out in the bill.

[*Translation*]

Mr. Thierry St-Cyr: I want to understand. You say that, currently, the minister controls a number of factors since he is the one ultimately who controls his department's implementation policies. When that is transferred to the Immigration and Refugee Board, he will lose that control. So, the additional elements that you are bringing are aimed at making sure that the necessary links are protected between his department and the board's decision.

[*English*]

Mr. John Butt: Yes, that is correct.

[*Translation*]

Mr. Thierry St-Cyr: Thank you.

If the rules of the board were to change, the way PRRA is dealt with might change, just as it might change if the minister were to decide to change the rules now.

I have a concern. In terms of legislation, are there any differences or changes relating to the protection provided by the Act? Apart from transferring the responsibility from the minister to the board, are there any other changes?

[*English*]

Mr. John Butt: The motions set out the detailed procedures for transferring these cases to the board from the department, from the minister. It sets out the legal limitations on the jurisdiction of the board and where the minister might choose to intervene if the minister had information.

Certainly there will be more detail in rules made by the board with respect to procedures at any hearings or interviews that have to be held, but as I say, the motions spell out, in more detail than the act does today, certain steps in the process.

For example, in subsection 112(3), it provides a restriction on access to a pre-removal risk assessment for persons who have been determined "to be inadmissible on grounds of security, violating human or international rights or organized criminality". The proposed motions include specific steps to suspend the consideration of a pre-removal risk assessment where the matter of inadmissibility on these grounds is being considered by the immigration division of the Immigration and Refugee Board. That's the sort of thing that has to be built into the legislative package. Today, the minister's delegate could simply wait, and is expected to wait, until the immigration division has completed its work. For the board, you have to spell out in the legislation that they will wait in this case and will not wait in that case, as the situation may be.

● (1555)

[*Translation*]

Mr. Thierry St-Cyr: I have a final question because I want to leave time to the other members.

Let us deal with the final decision. Can we expect that, in the great majority of cases, it will be the same final decision at the end of the day? With this new process, there is no reason to believe that a positive decision would become negative or vice versa.

[*English*]

Mr. John Butt: Presuming the same evidence and information before the decision-maker, one would expect the same decision in the future as one would get today on a particular case. If the person has demonstrated evidence that he or she would be at risk, they will be granted protection. If the evidence is insufficient to establish that risk, the person will not get protection.

The Chair: Mr. Karygiannis.

Hon. Jim Karygiannis: Thank you, Chair.

In the quasi-judicial body, if submissions from a member of Parliament or lawyer are made to the minister's office, does the minister then have the power to ask that the PRRA be held? Or once it's in that stream, can absolutely nobody touch it because it's a quasi-judicial body?

Mr. John Butt: Once the application is made to the Immigration and Refugee Board, the jurisdiction to hear the case and make a decision rests with the board. The minister cannot take that back unless the situation were one where the minister decided that the person should be allowed to stay in Canada—for example, on humanitarian and compassionate grounds, in which case there would no longer be a removal process, and the process before the board could be terminated. But if the minister is simply asking the board to delay or is seeking a different process before the board, no, the minister has no more opportunity to do that than does a member of Parliament.

Hon. Jim Karygiannis: So once a PRRA has been started and the application is put in, with the extenuating circumstances, H and C, is there a mechanism in the legislation that would allow the minister to take that back, or is it that once the process started it's on its way?

Mr. John Butt: Subject to the restrictions or bars that are in Bill C-11, the authority of the minister to act on humanitarian and compassionate grounds, even after the pre-removal risk assessment decision has been made, will not have changed.

Hon. Jim Karygiannis: So it remains the same.

Mr. John Butt: It's the same as today, subject to those provisions that are in the bill already with respect to limits on access to applications on humanitarian and compassionate grounds.

The Chair: Mr. Bevilacqua.

Hon. Maurizio Bevilacqua: As a follow-up, in a nutshell does this move increase or decrease ministerial power and discretion?

Mr. John Butt: I suppose inasmuch as the minister will no longer be making risk assessments on the vast majority of persons who are being removed from Canada, it would seem to decrease overall his range of authorities on that particular point. But he has other authorities that he can exercise where circumstances warrant it.

● (1600)

Mr. Luke Morton (Senior Legal Counsel, Manager, Refugee Legal Team, Legal Services, Department of Citizenship and Immigration): I would add that currently the legal structure is that the PRRA officer is a delegate of the minister, so that will change, obviously.

Hon. Maurizio Bevilacqua: Mr. MacDougall, I didn't have the benefit of being here in 2007 as a member of this committee. Some people were here. I'm just wondering, on the recommendation that was made to proceed with this transfer, can you tell me just the salient points? What were the reasons for doing that? What did the committee recommend?

Mr. Peter MacDougall: I don't have it in front of me, but I believe the two salient points were the consolidation of risk in one body, and the fact that the committee believed the IRB would be more efficient because it already has a comprehensive training regime and a very sound and comprehensive body of research available to officers.

Hon. Maurizio Bevilacqua: Why is it important to have the risk assessment under one umbrella?

Mr. Peter MacDougall: Well, it's largely an efficiency argument. The mandate of the IRB is risk. CIC also has some mandate for that. It obviously has been doing that, and it will continue to do a small number of PRRA assessments should the transfer be approved.

It's simply a question of efficiencies. You're more likely to have consistent decision-making if it's consolidated in one organization.

Hon. Maurizio Bevilacqua: A lot of this debate is centred around the protection and/or enhancement of rights for individuals. Does this move affect the rights of individual claimants in any way?

Mr. John Butt: No, it doesn't. Everybody who currently has an opportunity to submit a pre-removal risk assessment will have an opportunity to do so in the future. The vast majority of those applications will be considered by the Immigration and Refugee Board.

A small number of persons who are serious criminals, as I mentioned before, persons who are excluded from refugee protection by article 1F of the refugee convention, persons who are subject to security certificates—these would be retained at the ministerial level. The minister would make those decisions, delegated in most cases to senior officials of the department.

Hon. Maurizio Bevilacqua: To follow up on a question asked by Mr. Karygiannis, how does the role of a member of Parliament, as an advocate for a refugee claimant, change in this instance as a result of the transfer?

Mr. John Butt: If the issue is whether the member can make direct representations to the decision-maker, as is the case with the refugee protection division today, to my understanding, members of Parliament cannot make direct representations to the decision-maker, so in the future that would still be the case...

Well, Mr. Karygiannis corrects me. I'm not sure that... I'm not as experienced with interventions by members of Parliament, so I don't know exactly what they can and cannot do in any particular case. But my understanding, from his comments earlier, was that he was of the view that with this change they would not have the same opportunity to make submissions in the future as they had before.

Hon. Jim Karygiannis: May I say something, Chair?

The Chair: If Mr. Bevilacqua's finished, you can.

Hon. Maurizio Bevilacqua: Basically, the rights are not going to be affected.

There are some efficiencies that you speak of. When you speak about efficiencies, Mr. MacDougall, are you referring to efficiencies as they relate to the cost of administering the program?

Mr. Peter MacDougall: No, I'm referring to efficiencies in terms of faster decisions. Right now, I think the average time for a PRRA is something like nine months. I'm not going to give you a time, as the IRB model's not in place, but we expect that the time will be shorter, because the workload will be better distributed and the decision-maker will be focused solely on making decisions and will not be doing all the preparatory work that is necessary to make a decision.

Hon. Maurizio Bevilacqua: Okay.

Thank you.

The Chair: Before Mr. Karygiannis asks a question, returning to the IRB business that he's raised, a lawyer could appear as a lawyer. I suppose someone else could appear as an agent, or I assume so; I don't know whether I'm right or not. And then one asks the question: can a member of Parliament act as an agent?

There's always that fine line between someone who represents the government or is a member of Parliament interfering in a quasi- or actual judicial process. There are always the optics of that. I think I know where he's going, but it's a legitimate question, a legitimate area.

There's no question about it that we have to be very careful that politicians don't interfere in a process. But at the same time, they may have gained expertise, and they may be able to advise people. Can they go that extra step and be an agent of someone who's making an application? Or is that deemed to be...?

Have you discussed that? Is that person deemed to be interfering, as a politician?

● (1605)

Mr. John Butt: Certainly the person can have representation, legal counsel or a consultant, to assist in the preparation of their application and to appear with them at any oral hearing that the decision-maker determines is necessary pursuant to the provisions of the legislation. There's nothing that explicitly refers in our legislation to the role of members of Parliament. There's nothing that says they cannot act in the role of counsel. It's a matter of what is the appropriate protocol for a member of Parliament, recognizing perhaps the possibility that his or her presence might be perceived as affecting the decision-maker in a way that's not necessarily consistent with the role of a lawyer or a representative.

The Chair: My answer—I'm sorry, Mr. Karygiannis—is that I've had people ask me if I would appear as a member of Parliament in, say, a small claims court action, or indeed a criminal law action. I've said, no, you have to get a lawyer for that, and if you can't afford a lawyer you make an application for legal aid or you get someone else.

In my opinion, I would be interfering, as a politician, in the criminal courts or the civil courts, and I have just said, no, I won't do that. I wouldn't even give them advice.

Hence, I think that's where Mr. Karygiannis is going; in the past, a member of Parliament might try to help people stickhandle through sometimes very complicated processes and advise them how to do things, because they have access to ministry staff.

I think I have talked enough, but I think Mr. Karygiannis has a legitimate point. I don't think that the member of Parliament would be appropriate—because this is a quasi-judicial thing—to appear as an agent. I don't believe that would be appropriate. But then there's that fine line between advising the person and asking questions of others, as to whether that's interfering in the process.

So I've talked enough.

Mr. Karygiannis.

Hon. Jim Karygiannis: As it stands right now—correct me if I'm wrong—if an application has been made to an officer of PRRA, which is an agent of the minister, a representative from one of our offices can pick up the phone, call in, and say, look, I just got a fax, an e-mail, some new information that I want to submit to you.

Three-quarters of the time, the officers do not return phone calls to consultants and their lawyers. A lot of the times, lawyers will end up calling our offices, or the constituent will come in and say, “Can you please help me get this information to this person who is looking after my file?”, or whatever it is.

A phone call from an MP, a phone call from an MP's office, will be returned much faster than one from a lawyer or a consultant. Then you can say, look, I have some new information that I want to send you. As it stands right now, contacting the quasi-judicial body and saying that I have some new information that I want to send you, or speaking to someone who is making a decision, could be deemed to be unethical from our ethics point of view, from our commissioner of ethics.

So I have difficulty in moving in the direction unless something is brought in that says should we need to contact, or should our offices need to contact, the individual who makes the decision, then we can contact, and we don't have the difficulty of a quasi-judicial situation.

If somebody comes to the refugee board, the IRB, to begin with, and they're making their case in the first step, well, that's information that they deal with; it's a lawyer, and it's somebody who sits as a judge. But somebody who is making a decision about the PRRA, that individual—I'm not sure if he's going to be a member of the board or if he's going to be a civil servant—you can pick up the phone and call.

So you're making a decision, everything has been submitted, and all of a sudden the individual's house is attacked. As a case in point, last week in Pakistan, on Friday, 200 people were killed. That's new information. Now, the PRRA officer might have that information, he might not. He might not understand that the Ahmadiyya sect was attacked, the two mosques. If the IRB member is not aware of this and I want to pick up the phone and call in and say, "Look, there is some new information here", I could be in difficulty.

So I don't have the comfort level; you're not giving me the comfort level that would allow a member of Parliament, any one of us around the table, to be able to do that at the quasi-judicial body—not influence the decision, but get information to it. Right now we can, because when you're issuing a PRRA, the officer's name is at the bottom and a phone number is at the bottom. If you don't like that, then you pick up the phone and call the manager. You say look, there's some new information, would you please consider it and give it to your officer?

But in going to the quasi-judicial body, you have not left me with a comfort level that tells me that my office, I, or anybody else around this table is able to do that. So unless you want to stick something in here that allows us to do that, I have a difficulty. The difficulty is that we would not be able to serve our constituents to the best of our ability for those of us who want to go the extra step.

● (1610)

Mr. John Butt: There's nothing in the legislation today about the role of members of Parliament in any of the decision-making responsibilities under the Immigration and Refugee Protection Act. These are all administrative arrangements that are put in place.

In the decision-making process, the person has the right to make any submissions of evidence or information they wish. If they make a submission to the board before the decision-maker has made a decision, certainly the member is expected to take that into account. If the member did not take that information into account, then any decision would be subject to judicial review in the Federal Court. So there are ways to correct any failure of a decision-maker under the act to take into account the information submitted to him.

I don't know your experience in terms of contacting pre-removal risk assessment officers. I am not surprised to hear that the officers do not return your call. The appropriate—

Hon. Jim Karygiannis: No, no. I said that they don't return calls of consultants and/or lawyers. They do return phone calls to members of Parliament.

Mr. John Butt: From the individual decision-maker on a case or from the manager?

Hon. Jim Karygiannis: Individual decision-maker on a case and/or the manager.

Mr. John Butt: Okay. I didn't know that.

Hon. Jim Karygiannis: Right now, phone calls are returned, but once it goes to the IRB, a quasi-judicial body, if we were to call you—pardon my expression—just pucker up your lips and kiss it goodbye, because we are contravening that fine line. You're a quasi-judicial body.

So unless the people making the decision are officers and they're removed from being members...that gives us the opportunity and it gives anybody the opportunity to contact them.

You're dealing with a person's life. You're dealing with a person who at the very last moment has some new information; something changes, as it changes on an everyday basis. Then what comfort level do I have? If the decision is wrong—

Mr. John Butt: The act will not prevent a person—

Hon. Jim Karygiannis: Sorry, Mr. Butt, but if the decision is wrong and the person is deemed to be removed, he doesn't have the time to go to the Federal Court. We're talking at the very last minute here, when you don't have the time to go to Federal Court.

● (1615)

Mr. John Butt: The person who has information with respect to their case can submit it to the decision-maker. If it's urgent, then the information can certainly be sent by facsimile or by an e-mail attachment. There are ways to get information to a decision-maker at the last minute.

Now, if the decision has already been made, it may be too late, but the burden is on the individual, with the assistance of any counsel they engage, to ensure that the decision-maker is up to date with respect to their particular circumstances.

Hon. Jim Karygiannis: Mr. Butt, it seems that we're dancing around in a circle, so I'm going to be specific again. Can you change the legislation and put something in there that will allow intervention by a member of Parliament without getting into difficulty, as we are able to do now, to reach the board or to reach the decision-maker to say there is new information? Take faxing; talking about the IRB, you're lucky if it's looked at within 24 to 48 hours. An e-mail is never looked at. We're even discouraged from sending e-mails.

I'm talking to you about practical stuff, on the ground, maybe a little more than my colleagues are doing. Maybe I'm a little bit more hands on, but you can't send an e-mail because it will be looked at but not acted upon. As for faxing, you don't know who the officer is. You don't know who's making the decision. If you put it in "general", by the time it gets there, it will be two weeks.

Mr. John Butt: My colleague pointed out that of course if there is a last-minute situation of the type you've described, you and the constituent can certainly ask Canada Border Services Agency for a deferral of the removal until the board has had an opportunity to look at this new evidence.

Hon. Jim Karygiannis: Sorry. Look—let's not play with words here. This is to get information to you. If I go to CBSA and ask for a deferral, you won't know those facts, because the decision is made at your body.

Mr. John Butt: I'm an employee of the department, not of the board.

Hon. Jim Karygiannis: No, no, I'm talking about the IRB.

Mr. John Butt: The IRB will have procedural rules for the submission of information with respect to pre-removal risk assessments, as they have for everything else.

Hon. Jim Karygiannis: You're asking me to vote on a piece of legislation, sir, and I don't know what and how it would affect us. You see the difficulty I have.

The Chair: Mr. Karygiannis, we are going around in circles here. Obviously there's going to be some time before we get to clause-by-clause. You've dealt with this issue quite thoroughly.

Could I suggest that somewhere along the line you have a chat with Mr. Dykstra? Maybe the two of you could talk. You're asking whether an amendment could be made to the act or whether an amendment could be made to the regulations. I think it's up to Mr. Dykstra to comment on that.

Could I suggest that we move on to another issue and that you have an opportunity to discuss those things with him?

We'll go to Monsieur St-Cyr, Mr. Dykstra, and then to Ms. Chow.

[*Translation*]

Mr. Thierry St-Cyr: I would like to come back to a technical issue for a better understanding. Amendment G-5 relates to section 114. That clause, in all its subsections—114(1), 114(2), 114(3) and 114(4)—deals with the effects of the decision, with the possibility to cancel or reverse a decision and the effect of such a reversal. In the original process...

[*English*]

The Chair: We are on page 30, if any of you are following along.

[*Translation*]

Mr. Thierry St-Cyr: First, I want to talk about section 114 of the present Immigration and Refugee Protection Act. Currently, the minister makes a decision and, very logically, under subsections 114 (2) or 114(3), can reverse that decision. You can correct me if I am mistaken. The possibility to issue a protection decision would be transferred to IRB but the minister would still have the right to cancel or reverse that decision.

Am I correct in thinking that this would be the result of the amendments submitted by the government? If so, can you tell me why, when the right to make that decision is being transferred to IRB, the right to reverse that decision is not also transferred at the same time?

● (1620)

[*English*]

Mr. John Butt: The amendment specifically refers to persons described in subsection 112(3). Those are the cases that will be retained within the jurisdiction of the minister—serious criminals, human rights violators. It is those who are excluded from refugee protection under article 1F of the refugee convention.

Those are the types of situations that will be dealt with by the minister. If the minister, having heard the person's story in writing or orally through the delegate, is tricked into making a decision on the basis of misrepresentation or fraud, the minister has the authority to undo that decision.

[*Translation*]

Mr. Thierry St-Cyr: If I understand correctly, subsection 114(2) of the present Immigration and Refugee Protection Act deals with decisions made on the basis of paragraph 113(c), which itself refers to subsection 112(3), both dealing with cases remaining under the authority of the minister. Is that correct?

Do you want me to start again?

Subsection 114(2) states that:

> (2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of the removal order have changed, the Minister may re-examine, in accordance with paragraph 113(*d*) and the regulations, the grounds on which the application was allowed to and may cancel the stay.

Here you refer to decisions made under paragraph 113(*c*), where you say:

> (*c*) in the case of an applicant described in subsection 112(3)

So, subsection 114(2) deals with persons referred to in subsection 112(3), that is to say persons inadmissible on grounds of security or organized criminality or who were excluded on the basis of section F of Article 1 of the Refugee Convention, etc.

Is the amendment aiming at making sure that the power of the minister will only apply to those persons referred to in subsection 112(3)? Am I correct?

[*English*]

Mr. John Butt: Subsection 114(2), which we are not amending in these motions, refers to cases under subsection 112(3) that remain within the scope of the minister's jurisdiction, where the circumstances that gave rise to the stay of removal have changed. So the person may still be inadmissible for serious criminality and there might still be some risk in the country of origin, but the minister concludes that the balance of risk to the individual and danger to the Canadian public has shifted. Hopefully in most cases where the risk has been reduced for the person who is being removed, the person can be removed. That's subsection 114(2).

In subsection 114(3), which is being amended to impose the same restriction on the minister so that it only applies with respect to those subsection 112(3) cases, those serious cases, the minister will retain the authority to vacate a decision that the minister has made, or the minister's delegate has made, on the basis of fraud or misrepresentation.

[*Translation*]

Mr. Thierry St-Cyr: Very well.

[*English*]

The Chair: Ms. Chow.

Ms. Olivia Chow: So let us push this a bit. A refugee is from Burma, part of Aung San Suu Kyi's team. Obviously, deporting that person back may not make sense because the regime there might lock him or her up. However, because this person was involved in maybe the army or whatever, they may not be admissible according to, say, CSIS...maybe. But they obviously shouldn't be deported.

So if the minister made that decision that this person shouldn't be deported, has the right to stay, but not get landed status, this amendment will change it so that if the minister feels that the information given to him by this refugee claimant—let's say he's not really part of the Aung San Suu Kyi group, he's actually working for the government—then he actually can cancel his previous decision to not deport the person?

● (1625)

Mr. John Butt: I would agree with everything you've said except the suggestion that in some way the legislation changes anything. The legislation says that where the minister grants refugee protection, or grants a stay of removal, and learns later that the decision was based on fraud or misrepresentation, the minister can vacate his or her original decision.

That doesn't change in this bill. It simply takes out of the minister's jurisdiction—to vacate the granting of protection—those cases where the board is responsible for the decision.

Ms. Olivia Chow: I don't quite understand what's the difference. So if the board can make the decision, if the board feels that in this case this person being deported—assuming he's not lying—obviously shouldn't be deported back to Burma... If the board can make the decision, even though perhaps this person is normally not admissible but cannot be deported, then this amendment will allow the board to make that decision rather than the minister to make that decision?

Mr. John Butt: No. The board's jurisdiction is limited to those cases that are not described in subsection 112(3) of the act.

Ms. Olivia Chow: I understand that.

Mr. John Butt: The example you're giving is one where the person is inadmissible on serious criminality, human rights violations, etc.—

Ms. Olivia Chow: An army general from India.

Mr. John Butt: —so the board, on a pre-removal risk assessment application, does not have jurisdiction. That jurisdiction remains with the minister. If the minister is misled by the person's information—fraud or misrepresentation—then the minister retains with respect to those cases the authority to vacate his or her decision.

For the other cases before the Immigration and Refugee Board, it is the board's jurisdiction to deal with the fraud or misrepresentation, and there are provisions in the act for vacating the granting of refugee protection to persons who misrepresent themselves before the Immigration and Refugee Board.

Ms. Olivia Chow: So this amendment gives the minister the power to do so.

Mr. John Butt: This amendment retains the same power for the minister, with respect to the minister's decisions, as the minister has now. What the overall changes to the legislation would do, in these motions, would be to take away from the minister the authority to make decisions on applications for protection for those persons who are not described in subsection 112(3).

Ms. Olivia Chow: You have three double negatives in there. I don't quite understand it.

Am I the only one missing it?

So this G-5: you're adding a new clause.

Mr. John Butt: No, we're not.

Ms. Olivia Chow: You're amending—

Mr. John Butt: We're modifying an existing clause to make it more restrictive with respect to the jurisdiction of the minister.

The Chair: The word “replaced” is there.

Ms. Olivia Chow: We're talking about amendment G-5, right?

Mr. John Butt: Yes.

● (1630)

Ms. Olivia Chow: It says that “Bill C-11 be amended by adding after line 35 on page 8 the following new clause”.

Oh, I see; subsection 114(3) is “replaced” by what follows.

Mr. John Butt: Yes.

Basically, the only words that change are, “In the case of an applicant described in subsection 112(3)”, which is added to subsection 114(3) so as to restrict in the future the minister's authority to vacate to those cases where the minister has authority to grant a stay of removal.

Ms. Olivia Chow: And the reason you want to do this is...?

Mr. John Butt: Basically it's to allow the board to deal with granting of protection in other cases and for the board to deal with vacation of the granting of refugee protection as appropriate. They would deal with all of those types of cases. The minister's jurisdiction is restricted to those cases under subsection 112(3).

Ms. Olivia Chow: Right now, the board doesn't have that power.

Mr. John Butt: That's right. Today the minister makes all of those decisions to grant protection, and therefore all of those decisions to vacate.

Ms. Olivia Chow: So really it is to transfer some of what the minister's doing now to the board so that the board can then seize it and not have the minister do that. You're giving it to the board. IRB will be able to be in charge of that and make these decisions instead of the minister having to do so.

Mr. John Butt: The board will make decisions on the vast majority of applications for protection, and the board will deal with vacation of any decisions they would make with respect to those applications.

Ms. Olivia Chow: And the board has no power to do so at this point.

Mr. John Butt: Today, no, the board doesn't have that particular power. It's a power that's retained by the minister for all of these applications.

Ms. Olivia Chow: So even if the board discovered six months after granting refugee status to person A that this person lied, the board could not rescind that decision. This would actually give the board that power to do so, right?

Mr. John Butt: No, I think you're mixing up two parts of the legislation. Today, if the minister were to identify that the person who had been granted refugee protection by the refugee protection division of the board had lied or misrepresented his case, the minister would have to apply to the board for a vacation of that determination.

In the future, with these changes, if the board granted protection to a person under this new process—the process that is being transferred to them—and misrepresentation was identified, then the process would be for the minister to go to the board and ask for the board to reconsider the case and vacate the original decision.

So it's making a parallel move. It doesn't change anything with respect to the current jurisdiction of the board with respect to refugee claims. These are only with respect to—

Ms. Olivia Chow: The people who lied.

Mr. John Butt: —applications for protection.

Ms. Olivia Chow: Finally understood.

Thank you.

The Chair: Thank you, Ms. Chow.

Now, I have Monsieur St-Cyr on the list, and I understood from the committee's instructions that after the first hour—after Monsieur St-Cyr speaks—we would then get into the transition from the old to the new.

Is that my understanding?

Monsieur St-Cyr, and then Ms. Chow.

[*Translation*]

Mr. Thierry St-Cyr: I believe we are making progress.

I have a question about amendment G-6, at page 35, where paragraph 169(*c*) of the Act, relating to provisions applying to decisions, is being replaced. It states that "the decision may be rendered orally or in writing, except for a decision of the Refugee Protection Division... which must be rendered in writing". According to the amendment, "the decision may be rendered orally or in writing, except for a decision of the Refugee Protection Division in respect of an application for protection under subsection 112(1), which must be rendered in writing". This is the PRRA.

If I am not mistaken, this adds the obligation to render in writing the decisions relating to PRRA, but it removes the obligation to render in writing the decisions of the Refugee Appeals Division. Is that really the change? If so, why would you remove the obligation to render in writing the decisions of the Refugee Appeals Division?

[*English*]

Mr. John Butt: Paragraph 169(c) is amended in Bill C-11 to provide that decisions of the refugee appeal division may be issued either orally or in writing. At the end of a hearing, if a hearing is called for under the legislation, there could be an oral decision, or the member, if he needed time to formulate his thoughts, could adjourn the process and issue a decision in writing. The change with respect to the decisions of the refugee protection division on these applications for protection, these pre-removal risk assessment applications, is to retain the current practice of the minister and the department, which is to reduce all of these decisions to writing and have them delivered to the individual in person.

● (1635)

[*Translation*]

Mr. Thierry St-Cyr: I understand that you want to do this for consistency with what is already in Bill C-11 and that there should be no link with the addition of the obligation to render in writing the decisions relating to PRRA.

However, I would like to know why, in Bill C-11, you remove the obligation to render in writing the decisions of the Refugee Appeals Division. Is it a matter of policy?

[*English*]

Mr. John Butt: You refer to "rare" circumstances. I'm not sure that I understand what "rare" means.

Maybe that's a translation issue.

[*Translation*]

Mr. Thierry St-Cyr: PRRA, the pre-removal risk assessment.

[*English*]

Mr. John Butt: Okay. I understand.

[*Translation*]

Mr. Thierry St-Cyr: You add the obligation to render in writing the decisions relating to the pre-removal risk assessment. However, you maintain the removal of the obligation to render in writing the decisions of the Refugee Appeals Division. I understand that this was already in Bill C-11, but how, in terms of policy, do you justify the removal of the obligation to render in writing the decisions of the Refugee Appeals Division?

[*English*]

Mr. John Butt: Pre-removal risk assessment applications are made in the context of a removal process that has already commenced. The Canada Border Services Agency has made certain arrangements for the potential removal of the person, subject to the outcome of the application. It is simply a matter of keeping the process as streamlined as possible. Instead of having oral hearings in these cases, which would be exceptional, I would think, and/or delivering decisions orally in some other way, the practice will be to continue that and have the decisions transmitted to the person at an interview with the Canada Border Services Agency, as is the practice today on decisions by delegates of a minister.

[*Translation*]

Mr. Thierry St-Cyr: I said I understand that. I want to know why we do not require that the decisions of the Refugee Appeals Division be rendered in writing. From your answer, I seem to understand that it is because the Refugee Appeals Division will now be able to hold hearings and that it will not anymore have to put its decisions in writing. Is that the reason?

[*English*]

Mr. John Butt: The original change proposed in Bill C-11 was to grant the refugee appeal division the option of issuing oral decisions at the end of the hearing. It added that; it does not take it away with this amendment. It continues to have that option. But for pre-removal risk assessment applications, the current practice of delivering written decisions through Canada Border Services Agency is intended to be retained.

[*Translation*]

Mr. Thierry St-Cyr: All right.

[*English*]

The Chair: Ms. Chow.

Ms. Olivia Chow: I see; so it's just adding that if they're doing a PRRA, it needs to be done in writing. It would be done through IRB, not CBSA, right?

Mr. John Butt: The decision will be made by a member of the refugee protection division of the Immigration and Refugee Board. It will be done in writing and it will be delivered through Canada Border Services Agency, as are decisions of the Minister of Citizenship and Immigration today.

Ms. Olivia Chow: Right. I see.

It wouldn't be the same officer, I imagine, who'd made the decision to turn the person down.

Mr. John Butt: Are you asking if it is possible for a person to have made a claim before the refugee protection division and then subsequently make a pre-removal risk assessment and you want to be assured that it would not be the same member who makes the second decision?

● (1640)

Ms. Olivia Chow: That's right.

Mr. John Butt: I think it would be highly unlikely that it would be a permissible process under basic procedural fairness. There will be many members of the refugee protection division, and assigning the pre-removal risk assessment to a new member should not pose any problem to the board in any location.

Ms. Olivia Chow: So for pages 24, 25, 26, 28, and 29, all of that, really it's to move CIC to IRB, right? G-3 and G-4 both do that.

Am I correct? I just want to be 100% sure here.

Mr. John Butt: Yes. G-3, G-4, and G-6 are the provisions that move the pre-removal risk assessment from the department to the board. G-5 is a consequential amendment with respect to those cases that are retained by the minister for vacation, which we've already dealt with. Later on, there are a number of transitional provisions governing the transfer of the process, so that cases that are pending before the minister will continue before the minister and new cases will go to the board, upon the coming into force of these provisions.

Ms. Olivia Chow: Which are those?

That would save us some time.

Mr. John Butt: They are G-9, G-10, G-11, and G-12. I think they run from pages 44 to 47. Those four govern the transition from the current system to the new system when these provisions would come into force.

Ms. Olivia Chow: Tell me about....

Do you mind, Mr. Chair, if I ask something else?

The Chair: No. You're asking about the area that I thought we were going to get into, so you're doing fine.

Ms. Olivia Chow: We just knocked off four in a row.

The Chair: You're doing a great job.

Ms. Olivia Chow: On pages 44 and 47, then, the transition, let's say this came into effect tomorrow and the transfer happens. Before the transfer, the case would remain with CIC. After the transfer, well, then, RAD has to get set up. During the time when RAD is set up, what happens?

Mr. John Butt: Let's look at page 47, which is the coming into force provision.

It is amended to provide that these changes would come—

Ms. Olivia Chow: Hang on a second. What number is 47?

Mr. John Butt: Sorry; it's page 47, G-12.

This provides that the provisions with respect to the transfer of the PRRA will come up to 12 months after the date that the other changes to the legislation come into force. That is because we don't want to burden the board with two transitional provisions at the same time. So the board will set up the RAD. When it's ready, it will be proclaimed, and then up to one year later, the transfer of the pre-removal risk assessment from the department to the board will take place, so that these things can be done in the most efficient manner possible and we don't end up with too many things for the board to deal with in too short a time.

Ms. Olivia Chow: Okay.

In the meantime, before RAD is set up, CIC will continue to deal...and then a year after RAD is set up, CIC will continue to deal with all the PRRA provisions. Is that right?

Mr. John Butt: That is correct.

Ms. Olivia Chow: While the appeal division is being set up, refugee claimants will still have the opportunity—because they have no access to appeal—or the access to PRRA, even though 98% get rejected anyway.

Am I correct on that one?

Mr. John Butt: Up until the time when the provisions with respect to the refugee appeal division come into force, all claimants who are rejected by the refugee protection division will have access to the pre-removal risk assessment. The proposed one-year bar starts only for decisions of the refugee protection division or the refugee appeal division that take place after the provisions with respect to the refugee appeal division come into force.

● (1645)

Ms. Olivia Chow: I see. So the one-year bar and PRRA and the H and C, that you can't go into both streams—both of those wouldn't come into effect until the refugee appeal division is set up and functioning.

Mr. John Butt: In terms of the transitional provisions with respect to the H and C decision-making process, it comes into force on royal assent. Then there are certain exceptional transitional provisions that affect the timing for particular persons, depending on whether the claim is determined between royal assent and the coming into force of the RAD provisions, and retaining an ongoing opportunity for persons whose claims are pending after the coming into force of the appeal division provisions for a concurrent application for humanitarian and compassionate grounds.

Ms. Olivia Chow: That's not quite fair, though, because the appeal division is not set up yet, but the humanitarian and compassionate grounds would come into force, which means that...because it takes two years to set up the appeal division. In the meantime, these folks wouldn't have the opportunity to have what they've had in the past—right now, for example.

That's not fair. Why is—

Mr. John Butt: Well, I'm not going to get into a question of whether it's fair or unfair. The timing for persons whose claims are determined by the refugee protection division between royal assent and the coming into force of the RAD provisions is that the one-year bar on humanitarian and compassionate applications will not apply. But for those persons whose claims are still pending on the coming into force of the refugee appeal division provisions, the provision that bars concurrent applications for humanitarian and compassionate consideration while the claim is pending will not be applicable. That's what the legislation provides.

So there are, if you like, mitigating transitional provisions with respect to the H and C bar, but those are separate from the question of the bar on pre-removal risk assessments. That is tied directly to the coming into force of the RAD.

Ms. Olivia Chow: Okay.

And the government's G-9, G-10, and G-11 basically do the same thing; you transfer everything to...?

Mr. Chair, I don't want to dominate here. I hope I'm at the right....

Yes? Okay.

So G-9, G-10, and G-11 basically say that we let RAD get set up, and then we transfer everything PRRA into CIC. That's what is happening?

What do G-9, G-10, and G-11 do?

Mr. John Butt: Well, G-9 simply retains what is currently in the bill, which is that the one-year bar on access to pre-removal risk assessment starts from the date on which the RAD provisions come into force. The change in this motion is simply to change the reference: “subsection 15(1)” becomes “subsection 15(3)” because we've added new proposed subsections 15(1) and (2) in these motions.

It's just a technical change.

Ms. Olivia Chow: Okay. And amendment G-10...?

Mr. John Butt: Amendment G-10 is to confirm that applications that are pending prior to the coming into force of the transfer of the pre-removal risk assessment to the board will be dealt with under the current provisions; that is to say, the decisions will be made by or in the name of the minister.

Then, in amendment G-11, we have a provision to make it clear that... Just let me make sure I have this one right, because I don't want to confuse myself and you. Again, it's a change with respect to subsection 15(3). The provision had read subsection 15(1), so it's just a technical correction because of the renumbering of the provisions of the bill as proposed in these motions. There is no substantive change.

● (1650)

Ms. Olivia Chow: So amendment G-11 is—

Mr. John Butt: It's just a technical change.

Ms. Olivia Chow: Okay. I get it.

Thank you, Mr. Chair. I think I understand.

The Chair: Yes. Thank you, Ms. Chow.

Mr. Karygiannis.

Hon. Jim Karygiannis: Thank you.

On the traditional provisions, I'm trying to understand. The people who are in the system right now, once this gets royal assent and it kicks in, do they switch over? Or do the ones who are in the system right now continue in that process?

Mr. John Butt: Are you talking about pre-removal risk assessment applications or more generally?

Hon. Jim Karygiannis: More generally.

Mr. John Butt: Basically, there is a series of provisions with respect to transition. There is a transitional provision with respect to humanitarian and compassionate considerations, which comes into effect on royal assent, with the two provisions I mentioned that provide for mitigation in the course of the transition up to the point where the RAD provisions come into force.

Hon. Jim Karygiannis: Sorry, but you said H and C decisions. Can you elaborate a little bit more on that, please, exactly what...?

Mr. John Butt: Okay. The bill provides currently that all of the provisions with respect to humanitarian and compassionate considerations that are made in this bill come into force on royal assent. That is because there are no great infrastructures to be built in order to bring those provisions into law, so that's done immediately.

For the creation of the refugee appeal division, for the staffing of the refugee protection division by public servants, for the creation of rules with respect to the triage interview, the refugee protection division, and the refugee appeal division, and in terms of finding accommodation for the board and its new structure, all of those things are going to take time, so there is provision for that taking up to two years.

Hon. Jim Karygiannis: Okay.

On H and C—

Mr. John Butt: Yes.

Hon. Jim Karygiannis: —you come into Canada, you apply for refugee status, and in the meantime you also apply for H and C. I think that will still be continued, right?

Mr. John Butt: The proposal says that if a person makes a claim for refugee protection, they can no longer apply for humanitarian and compassionate consideration. There is a proposal among the government motions for an exception for those persons who, prior to the hearing before the refugee protection division, recognize that they're in the wrong stream, that they should be applying for humanitarian and compassionate consideration. If those people, up to that point, withdraw their refugee claim, then they can apply for humanitarian and compassionate consideration.

Hon. Jim Karygiannis: Okay. I could be wrong, but I thought the minister mentioned something about how they can simultaneously apply for H and C.

Mr. John Butt: They can...?

Hon. Jim Karygiannis: I think so. That's what he said last night. I could be wrong.

Mr. John Butt: Under the current bill, no, they can't. The minister has proposed an amendment—or there is a government amendment in the package of motions that you have—

Hon. Jim Karygiannis: Okay.

Mr. John Butt: —that would allow for the person to change their mind and go to the H and C.

Hon. Jim Karygiannis: So they could have either/or...?

Mr. John Butt: No. You have to choose, but you have that period of up to 60 days from the date of the triage interview to effect your decision and act in either way.

Hon. Jim Karygiannis: Okay. As the bill stands right now, you apply for refugee status. That's a negative, and then you go through the process, and in the meantime you're applying for H and C. You would still be able to be removed under H and C; you're still going to be able to be removed although you have an H and C application.

Mr. John Butt: You're right. There is no provision in the Immigration and Refugee Protection Act with respect to a stay of removal where there's an application for humanitarian and compassionate consideration.

Hon. Jim Karygiannis: Thank you.

The Chair: Monsieur St-Cyr.

Sorry—Mr. Bevilacqua?

Hon. Maurizio Bevilacqua: I'll allow—

The Chair: Okay, Monsieur St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr: I know that I may be the first member to ask this question but I want to make sure that I understand the transition. So, I would put the question differently to you.

The Act as the government intends to amend it would include a number of provisions that would be favourable to the claimants, who would have more rights and more opportunities. This is basically related to the Refugee Appeals Division. On the other hand, some provisions would be unfavourable to claimants in that the possibility to appeal or to use additional procedures that existed in the past would be limited.

Are there any cases when a claimant would be forced to accept unfavourable provisions, that is to say provisions shutting down doors that were open previously, and doing that even before the claimant had access to a favourable decision, namely from the Refugee Appeals Division?

● (1655)

[*English*]

Mr. John Butt: In terms of going from perhaps an H and C application that's denied and then having the opportunity to apply for refugee protection thereafter—is that the scenario you're talking of?

[*Translation*]

Mr. Thierry St-Cyr: No, I am just trying to see if people would be subject to more restrictive provisions, if I may use that word, when they have not had the opportunity to appeal to the Refugee Appeals Division.

[*English*]

Mr. John Butt: The transitional provisions with respect to humanitarian and compassionate considerations provide that the bar on access to an application on humanitarian and compassionate grounds after a refugee protection division decision does not apply during the period between the royal assent and the coming into force of the provisions with respect to the refugee appeal division. So that provides an opportunity for mitigation when a person is rejected by the refugee protection division and does not yet have access to the refugee appeal division.

[*Translation*]

Mr. Thierry St-Cyr: So, a claimant applying under the current system, which does not provide for an appeal, will continue to have access to the traditional PRRA and will be able to apply under humanitarian reasons, or for a temporary resident permit, etc.

[*English*]

Mr. John Butt: I'm not sure I understand the connection between H and C and PRRA, except currently they're both done by the same officer at the same time. But the person's rights on transition are that up to the point where the RAD provisions come into force, the person whose claim is rejected after royal assent will have access to H and C consideration if they wish to apply, and if they are subject to removal from Canada, they will have access to a pre-removal risk assessment.

After the coming into force of the RAD provisions, the persons whose claims had been determined prior to the coming into force would not automatically have access to RAD at that point, but they would continue to have access to pre-removal risk assessment.

[*Translation*]

Mr. Thierry St-Cyr: You refer to the point that will determine which system will apply. Will it be when the claimant makes an application or when the decision is rendered? Could it happen that an application made under the old system will lead to a decision also made under the old system? Will the coming into force of the new provisions mean that the application will be dealt with under the new system?

[*English*]

Mr. John Butt: If a claim made today, or a claim made after royal assent up to the point of coming into force of the RAD provisions, is started, it will be transferred to the new process if the refugee protection division has not yet started to hear evidence with respect to that particular claim. The person whose claim is pending and who is still waiting for a hearing date will be dealt with under the new system. If the hearing has started and the refugee protection division member has heard evidence, then that refugee protection division member will continue to hear that case to the end.

The decision made by either the GIC refugee protection division member or by the public servant refugee protection division member after the coming into force of the RAD provisions will be subject to appeal before the RAD.

● (1700)

[*Translation*]

Mr. Thierry St-Cyr: I would like to talk about the date of coming into force mentioned in the last section of the Bill, section 42. Whether in amendment G-12 or in the original Bill, I read that, generally speaking, the provisions will come into force two years after royal assent or, in the meantime, at a date or dates fixed by order in council.

However, there are exceptions, such as sections 3 to 6, 9, 13, 14, 28 and 31, to which are added sections 32, 39 and 40 because of amendment G-12. The date of coming into force of those sections is not specified. Does that mean that they will come into force as soon as the Bill gets royal assent?

[*English*]

Mr. Luke Morton: The Interpretation Act governs this situation, and it comes into force on royal assent.

[*Translation*]

Mr. Thierry St-Cyr: One may say that the default position, generally, if it is not otherwise specified, is that the sections will come into force when the Bill gets royal assent. In this case, most of the sections will come into force two years after, except those that are not specified or that are excluded.

I needed a clarification. I may have misunderstood when you were answering my colleague, Mrs. Chow. Which transfer will come first, the PRRA or the Refugee Appeals Division?

[*English*]

Mr. John Butt: The RAD provisions, or all of the provisions with respect to the asylum process, are spelled out in amendment G-12 in new proposed subsection 42(1). All provisions, except those that are specified there, will come into force not later than two years after the date on which the bill receives royal assent. That is to say, the provisions that are spelled out there will come into force on royal assent.

The transfer of the pre-removal risk assessment will come up to 12 months further in time, after the coming into force of the provisions that create the refugee appeal division and create the public servant refugee protection division. That, as I said before, is to give the board an opportunity to absorb a very large piece of work with respect to the creation of the RAD, etc., and then, thereafter, to take on the task of the transfer of the pre-removal risk assessment function.

[*Translation*]

Mr. Thierry St-Cyr: So, your answer to my question is that the Refugee Appeals Division will be transferred first and then, a year later, the PRRA.

[*English*]

Mr. John Butt: Yes, that is correct.

Mr. Thierry St-Cyr: That's it for me.

The Chair: Are there any other questions?

Ms. Chow, go ahead.

Ms. Olivia Chow: That only has an impact on the administrative side. It has no impact on the one-year bar or on whether it's on H and C. It's really about who actually administers it. A year after RAD is set up, it will be transferred from CIC to the IRB.

Mr. John Butt: That's right.

Ms. Olivia Chow: Right. Thank you. That's for PRRA...?

Mr. John Butt: Yes. It provides a further 12-month delay before the PRRA is transferred to the board, but it makes no further changes with respect to the pre-removal risk assessment process. All of those provisions will have come into effect up to 24 months after royal assent.

Ms. Olivia Chow: Thank you.

The Chair: Are there any other questions or comments from the committee?

Ms. Olivia Chow: Not in terms of the government's recommendations. Are you open for other questions?

The Chair: Now's the time to do it; sure, we still have time.

Ms. Olivia Chow: All right.

This is in terms of the refugee appeal division and what gets to be considered. I'm looking at page 7, at clause 13.

● (1705)

The Chair: Page 7 of the bill?

Ms. Olivia Chow: Yes.

I'm looking at the top of page 7, at proposed subsection 110(4).

In these two categories, it says what information can be presented at the appeal division. Why can't we just have something really straightforward—i.e., on appeal, the person who is the subject of the appeal may present additional evidence? Why all that complication?

Mr. John Butt: The intent of these provisions is to encourage the refugee protection claimant to present all of their case, all of the evidence, with respect to their need for protection at the refugee protection division, not to hold anything back, so that—

Ms. Olivia Chow: Why would they want to do that?

Mr. John Butt: I'm told that sometimes they do. I don't know how often. I'm not the board, but I'm told that sometimes the information is incomplete. It's through the failure of the person...or the thought that the person may have that if you hold this piece of information back, maybe it leads to some questions about their exclusion. They say, "Well, I'd rather not put that in here now. I'll save that for later." We're saying in that situation, you don't bring it up later; you don't have that opportunity to bring up facts that are questionable in terms of the impact they may have. They may increase the likelihood that you're at risk but create a possibility that you might be excluded. So you say, "Well, let's see what the RPD does with the rest of the information. I'll hold this back. If worst comes to worst, I can always bring it to the refugee appeal division." We don't want that kind of thing happening.

You were talking about examples from Burma, where people were involved in activities that were of questionable intent and impact. The person might say, "Well, I'll just say that I'm a member of the Aung San Suu Kyi movement and I won't mention all of those other things, because they might not like to hear about that. I can always bring it to the RAD later."

So the idea is to say, no, bring it all to the refugee protection division, and if you don't bring it to the refugee protection division in the first instance, you're not going to have an opportunity later to supplement your case with evidence that you could have presented.

Ms. Olivia Chow: But that wouldn't be...I shouldn't use the word "fair" again. Sometimes they would have other evidence that would take extra effort to get, maybe because it costs lots of money to get it, it takes time to translate, it might put family members at risk, or they have to admit that they are involved in a same-sex relationship. There may be any number of reasons why they just don't have that information at the time of the hearing.

I'm sure they want to put everything at the hearing to get the best situation, to get a yes. Why would they hold anything back?

But let's assume that they get some additional information: if they can't present it, that wouldn't make sense. It says here they can only present evidence that's "reasonably available", or "expected in the circumstances to have presented", and so on. Isn't that a difficult...?

You're actually saying that even though they may get evidence later—for whatever reason—they can't present it? Why do that? What kind of evidence do you have that people hide their torture information so that they wouldn't present it at the first hearing?

Mr. John Butt: The provision in proposed subsection 110(4) provides for three different scenarios in which evidence can be presented to the refugee appeal division that was not presented to the refugee protection division.

The first, of course, is evidence that arose only after the rejection of their claim. So if a person becomes aware of events in their country only after the claim has been heard, no problem; they can present that evidence.

If it's evidence that was not reasonably available—if the person did not know about the event that happened in his country because he'd been out of the country for many years—then, again, there's the opportunity to bring that evidence forward.

And the third is the scenario that I think you've been alluding to, which is evidence that the person could not reasonably have been expected in the circumstances to have presented. That's a judgment call by the refugee appeal division. The person can make their case to the refugee appeal division member as to why it was not reasonable in the circumstances for them to have presented the particular evidence.

● (1710)

Ms. Olivia Chow: What if they don't have the money, if they said, "I just don't have the money"? Or what if they said, "It would cause my family great hardship—they would be subject to a jail sentence—if I were to tell this"?

Mr. John Butt: Those are factors that the refugee appeal division member would have to take into account.

You and I may have differing views with respect to those two different scenarios. Cost may be less clear-cut than the latter; if the person can demonstrate the risk to their family had they moved too quickly with respect to that evidence, then the member has the authority to say, yes, I understand; that's reasonable under the circumstances; you can present that evidence.

If it's a case of not having the money, not having the money may be a question of "I didn't want to spend the money". Those are issues that the refugee appeal division member would have to take into account and weigh and reach a decision.

Ms. Olivia Chow: But—

The Chair: Ms. Chow, the bells are going to ring in less than five minutes, so unless it's very quick—

Ms. Olivia Chow: I have just one point.

The Chair: Okay. I understand.

Ms. Olivia Chow: Then I'll finish.

The Chair: I hope you will, because I want to say something to the committee. But you go right ahead. If it's very quick, you go ahead.

Ms. Olivia Chow: Okay.

If they can't present the evidence even though the evidence is relevant to the case, and it's subjective whether they are able to present it, then wouldn't that discriminate against those who have serious problems—i.e., financial, or the family could be in trouble, or the partner in a same-sex relationship could get in trouble?

So why not consider that evidence? I don't quite understand that.

Mr. John Butt: I think what you're saying is that the refugee appeal division member will have the jurisdiction to assess those explanations and determine whether the evidence ought to be considered. If the refugee appeal division member errs in terms of making a reasonable decision on whether that evidence should have been heard, it's subject to judicial review in the Federal Court. So any errors of that sort can be corrected on judicial review.

Mr. Luke Morton: I'll just very quickly add that with regard to the notions of relevance and reasonableness, there is a subjective element to them. To say if it's relevant or reasonable—it's not that clean a line.

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

The Chair: Thank you, Ms. Chow.

Before I adjourn the proceedings, I'm going to ask if the three critics and the parliamentary secretary, and Mr. Ross, would come to the front of the room. I'd like to speak to them as soon as we're adjourned.

This meeting is adjourned until Thursday at 3:30 at the Queen Street committee room.

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