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Chair

Mr. David Tilson

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● (0850)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I call the meeting to order.

Good morning, ladies and gentlemen.

This is the Standing Committee on Citizenship and Immigration meeting 46. Today is Thursday, March 3, 2011. The orders of the day, pursuant to Standing Order 108(2) are for our study of immigration application process wait times.

We are continuing with this study and, of course, you'll see from the agenda that we're going to stop the meeting towards the end of the meeting, perhaps in the final five minutes or so. The subcommittee met, and we need to have the report of the subcommittee approved, so towards the end of the meeting we will go in camera to adopt that report.

We have three witnesses in total for the session today, and they have 40 minutes each. First of all, by video conference from Hong Kong, we have a number of witnesses from the Department of Citizenship and Immigration. Once again we have Mr. Gilbert, director general of the international region, who is here to help us.

Thank you, sir. You're a regular attendee at these meetings. Thank you for coming. I'm going to let you introduce your colleagues from Hong Kong. We appreciate their taking the time late at night there to appear and assist us.

Sir, you have the floor.

Mr. Rénald Gilbert (Director General, International Region, Department of Citizenship and Immigration): I won't go into details; I'll just mention my colleagues who are there. Jim Versteegh is the immigration program manager in Hong Kong, and Angela Gawel is the deputy program manager of the same office. We also have two of the team leaders: Lorie Jane Turner, who is the economic immigration unit manager, and Scott Paterson, who is the team leader responsible for family class. Essentially you have the management team of Hong Kong there on the screen.

The Chair: Mr. Versteegh, can you hear us?

Mr. Jim Versteegh (Immigration Program Manager, Hong Kong (China), Department of Citizenship and Immigration): Yes. Thank you, Mr. Chair, for giving us the opportunity to address you today.

The Chair: The pleasure is ours, sir.

Mr. Jim Versteegh: Can you hear us?

The Chair: We can hear you very clearly, and if you could make a submission of up to 10 minutes, we'd appreciate that.

Mr. Jim Versteegh: All right; I'll try to keep it below that.

The Chair: Thank you, sir.

Mr. Jim Versteegh: I'll begin with a short overview of what this office does.

Hong Kong is a full-processing mission responsible for the delivery of the immigration program in Hong Kong and Macau, and we share responsibility with Beijing for the immigration program in China. Family class applicants from the four southern provinces of China are processed here in Hong Kong, in part because of Hong Kong's Cantonese language capacity. All other immigration applicants in China have the option of applying either in Beijing or here in Hong Kong. Since the opening of the visa application centres in China in July 2008, People's Republic of China residents rarely apply here for temporary resident visas. There remains, however, a large Hong Kong-based temporary worker and student movement out of the office in Hong Kong.

The immigration section in Hong Kong consists of 10 Canada-based officers and 62 locally engaged staff, including seven designated immigration officers. Two of the CBO positions are migration integrity officers filling CBSA positions here. Hong Kong works with the regional medical officer and the FCO based in Beijing and the RCMP liaison officer here in Hong Kong. The highest production office of the *Service de l'immigration du Québec* is also located here in Hong Kong in the same office tower, just below us. That office has regional responsibility for all of Asia.

The Hong Kong visa office issued just over 16,000 immigrant visas in 2010, and we expect to issue a similar number in 2011. Almost all visas issued by this office are to people resident in mainland China, with over 80% being in the economic categories. Output, however, continues to be lower than intake. As a result, the inventory of cases in Hong Kong has grown from about 22,000 early in 2008 to over 34,000 today. That represents about 95,000 people. The largest component of our inventory is federal investor applications, of which we have about 16,000 cases and over 50,000 people. The next largest part of our backlog is pre-Bill C-50 skilled worker files; we have over 10,000, or about 24,000 people, with the oldest cases dating back to 2006. We issued about 1,500 visas to Bill C-50 skilled workers in 2010.

Hong Kong has a large temporary worker population originating from many source countries in the region, such as the Philippines, Indonesia, Nepal, and China. The majority work in the domestic sector and in construction. Though Hong Kong relies heavily on foreign workers, it remains difficult to obtain permanent resident status here, including for people from the People's Republic of China. As a consequence, accepting a temporary work contract here in Hong Kong is seen by some, particularly domestic workers, as a stepping stone for a subsequent move to Canada. Hong Kong processed over 3,600 temporary work permit applications in 2010, mostly to LCP applicants, and our refusal rate was about 12%. The number of applications for temporary work permits received in 2010 was comparable to that of the previous year. Fifty per cent of temporary work permit cases were processed in about two months.

Counteracting fraudulent activity is a major preoccupation here in Hong Kong and is addressed by way of a multi-faceted anti-fraud and quality assurance strategy. An experienced case analysis unit that is skilled in document verification works closely with an anti-fraud unit that is part of our migration integrity unit. Site visits are also carried out on a regular but exceptional basis by the migration integrity officers stationed in Guangzhou and Shanghai.

A major focus of our anti-fraud activities has been spousal applications; in this area, marriages of convenience have been found to be endemic. The family class priority processing timeframes incorporate the assumption that 80% of such cases are non-problematic; in Hong Kong, the reverse is true. We have serious fraud concerns for 60% of our spousal movement and have some concerns for another 20%.

● (0855)

Although in most countries FC1 interviews can be waived, that is not the case in Hong Kong. About half of our spousal applicants are interviewed in order to give them an opportunity to address our concerns in person. Of those seen at interview in 2010, 70% were refused because of confirmed or highly suspected marriage fraud. The information and evidence collected suggest strongly that the movement is organized and very lucrative for the organizers. Our high refusal rate has resulted in a decrease in new applications received in that category in the past two years, as those intent on abusing our system are now less likely to apply. As a consequence, our refusal rate has started to go down; it down from 57% in 2009 to 47% in 2010. Constant vigilance, however, is required to curb abuse.

Priority processing has been maintained for genuine spousal cases. We have instituted measures such as tracking case processing at the front end stages, doing upfront background checks, increasing our interview schedule, and requesting the passport early on in the process to meet the new service standards, but we're not there yet. The extra time required to investigate many of our most problematic cases adds to our average processing times, but with the ratio of illegitimate cases decreasing, we are focusing on bringing down overall processing times in the next months.

The changes to the federal immigrant investor program that took effect on December 1, 2010, served to moderate the intake of new applications. At the time of the moratorium on investor applications in June 2010, we had already received about 9,000 such applications that year. Following the reopening of the program in December and the doubling of the personal net worth and investment requirements, the number of new applications received dropped to a more manageable 300 per month. Active recruiting for business immigrants by consultants continues to take place in the PRC, and we do not discount the possibility of renewed growth in our intake. The visa office in Hong Kong processed about half of Canada's 2010 global target of federal investor cases and will do so again in 2011.

New applications, however, still outnumber finalized ones. As a result, a backlog of new federal investor files is already being created, while there is little reduction in the inventory of old files. We are currently processing applications received in mid-2008 in that category. The majority of Quebec and provincial nominee cases processed in Hong Kong are also in the investor categories.

I'll stop there, Mr. Chairman. Thank you, and I'll be happy to answer any questions the committee may have.

The Chair: Thank you, sir. We appreciate your presentation, and committee members will have some questions. Each caucus will have up to five minutes.

Go ahead, Mr. Trudeau.

Mr. Justin Trudeau (Papineau, Lib.): Thank you very much, Chair.

Thank you to all of you for being here from Hong Kong. What time is it in Hong Kong?

Mr. Jim Versteegh: It is about five minutes to ten at night.

Mr. Justin Trudeau: Thank you for staying late.

My first question is to try to understand what the difference is in general between Beijing and Hong Kong. What sort of different populations do you serve, other than the southern four provinces, with the Cantonese? You mentioned you were serving other countries as well as temporary foreign workers coming through. I'm just trying to get an idea of the difference between Hong Kong and Beijing in general.

Mr. Jim Versteegh: The only real difference is that we have defined which provinces are dealt with by Hong Kong and by Beijing in the family class, and only in the family class. In that category we deal with the southern part of China, which is primarily Cantonese-speaking, while Beijing deals with the rest of China.

For all other immigration applications—all categories, including investors, skilled workers, provincial nominees, and Quebec cases—we share responsibility with Beijing, and it is the applicant who decides where to apply.

● (0900)

Mr. Justin Trudeau: Thank you. That's helpful, particularly because when we look at family class, we can see that wait times for parents and grandparents from Hong Kong are already, as you mentioned, quite long at 22 months. Furthermore, your office will be getting a cut of 68% in these visas from 2009 numbers, down 450. How much will that aggravate current wait times? Are the wait times for parents and grandparents expected to go up from the 22 months since you're receiving a reduction?

Mr. Jim Versteegh: It's fair to make that assumption, given that we have more applications in process than we can issue visas for. I understand, however, that the reason for that reduction in Hong Kong was that the inventory of cases in Beijing was older than the inventory of cases here in Hong Kong, so there was an effort to be fair to everyone in China and treat them the same way.

Mr. Justin Trudeau: I understand the policy concerns, but I'm interested in the impact on the families for whom wait times on parents and grandparents has been a real issue, as we've seen right around the world. I'm concerned that increasing wait times is not going to be desirable in its impact on Canadian immigration.

The issues surrounding fraud are interesting to me as well. The numbers are high, but pleasingly on the decrease, so it looks as though your impacts have given fruit. Is that going to shorten wait times for spousal applications, the FC1 applications? If someone legitimately does apply, are you expectied to be able to process them more quickly, perhaps because the number of applications is declining?

Mr. Jim Versteegh: That is the intent and the expectation. Yes, that's what we're aiming for.

Mr. Justin Trudeau: On investor applications, we're talking about doubling the target numbers for both accounts and the investment. What impact are you seeing on the investor class? What response are you getting from the potential investor community on those new numbers?

Mr. Jim Versteegh: The intake prior to the change was unmanageable. The last month that the old program was in place —that was in June—we received about 1,000 investor applications in one month. In 2010, in the first six months, we received 9,000 new investor applications. It was completely unmanageable. When the program was reopened on December 1, 2010, the initial intake was fairly high because of pent-up demand from July to December of 2010. It is now averaging about 300 new applications per month. There's been a significant reduction—60% to 70%—in the number of applications received, but we are still receiving a significant number of applications in that category.

The Chair: Thank you.

Mr. St-Cyr is next.

[*Translation*]

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

In our ridings, we see a lot of cases of temporary resident visa applicants from China. Often, these people, who simply wish to visit with their family, see their application rejected. I would underscore the fact that I have no quantitative assessment. However, this has been observed. If often happens that people wish to join with the rest of the family because a parent has died, or one of the children is to be married, etc.

How is it that there are so many cases from China, and what reasons bring an officer to refuse a temporary resident visa to someone who simply wishes to attend the funeral or the wedding of a relative?

● (0905)

[*English*]

Mr. Jim Versteegh: I should have mentioned in my opening comments that the office here in Hong Kong does not deal with visitor visa applications from China on a regular basis. We opened four visa application centres in China in July 2008 and we have a contract with a private service provider that takes in the applications for persons who want to visit Canada. Those applications all go to our office in Beijing for processing. Persons from Hong Kong do not need visas to visit Canada, so we don't deal with many applications from China for visitor visas.

[*Translation*]

Mr. Thierry St-Cyr: I understand. You could perhaps relay the message to your colleagues in Beijing when you cross paths with them.

As for the investor immigrant program—that of Quebec, among others—, I have received a lot of comments on the part of people who work with these investor immigrants. Their impression is that there is duplication with regard to the work done to verify the source of their funds. In their view, when a request is made to the Government of Quebec, the provenance of the funds is verified so as to ensure that they are not the product of criminal or fraudulent activity, after which the file is relayed to Ottawa, in this case to your embassy. We have the impression that the work is done a second time, whereas the refusal rates of candidates by Quebec and the provinces are extremely low.

What measures are you taking to ensure that the wait times are as short as possible, given that the verification work as to the origin of the funds has already been done?

[*English*]

Mr. Jim Versteegh: There are two reasons that we check on the provenance of funds for investors. One is to determine whether the applicant meets the definition of an investor, so we have to determine how they obtained their money and whether it was on the basis, again, of meeting the requirement of the definition of investor. That is done by Quebec; that's the eligibility decision.

The second reason we look at the source of funds is to determine whether or not they were obtained through criminal means. That is an admissibility factor, and, under our legislation, it remains the responsibility of the federal government to make that determination.

In reality, it is rare that detailed questioning would take place with a Quebec investor case, but we do, on occasion, do some background checking to ensure that there isn't fraud associated with how money was obtained. Since we deal with a very large number of federal investor cases as well, it's easier for us to identify patterns that may suggest fraudulent activity, so we certainly do a quick review to make sure there's no criminal activity associated, because Quebec has not been given responsibility to determine that admissibility factor. In reality, we invariably or almost always simply recognize the decision by Quebec to accept a case they have accepted as an investor.

The Chair: Thank you, Mr. Versteegh.

Good morning, Ms. Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): Good morning.

The Chair: You have up to five minutes.

Ms. Olivia Chow: Yes.

What is the quota for parents and grandparents for 2011, compared to 2010?

Mr. Jim Versteegh: In 2010 it was 1,375 visas and for 2011 it's 560.

Ms. Olivia Chow: What would be your average processing time for parents for 2011, in your projection? Is it about five years?

Mr. Jim Versteegh: No, the average processing time for parents in 2010 was about 22 months. I expect those we complete in 2011, since we're still dealing with the same caseload, would be in that same range, but since we have more cases in process than we can visa this year, next year the processing times may indeed be a bit longer if we don't have a larger target.

● (0910)

Ms. Olivia Chow: You can't project how much longer, then.

Mr. Jim Versteegh: That's very hard to say. It depends entirely on what our target is next year.

Mr. Rénald Gilbert: Maybe one thing I could add is that the majority of the cases that are going to be finalized this year are people who applied in 2008, so it cannot be five years, because they applied three years ago. We look at the age when people apply. It gives us a bit of an idea, but it's very difficult to predict a long time in advance what it would be. It evolves very slowly from one year to the next.

That said, the target for China overall has increased, because we essentially increased the target in Beijing a lot, as was mentioned in earlier discussion.

Ms. Olivia Chow: Thank you.

On the parents one, the suggestion from the Canadian Bar Association is that once they are ready to take the medical examination, you don't ask for a second one because it is through no fault of their own that they end up waiting a long time. Have you considered that possibility?

The question is for perhaps Mr. Gilbert.

Mr. Rénald Gilbert: I am not sure what you are referring to as a second medical examination.

Ms. Olivia Chow: That is because the first one expires, and they have to get another one.

Mr. Rénald Gilbert: Jim can correct me, but in the vast majority of cases the first one does not expire, because we give the medical instructions at the end of the process, which means normally they don't expire. It doesn't mean that there will be no further medicals for, let's say, TB, that this will not happen. Ultimately we are responsible for the safety of Canadians, so if somebody has done their medical a long time ago, especially in an area where there is a significant occurrence of TB, we have to be careful.

Ms. Olivia Chow: I think the suggestion was to do it close to the beginning, so that it gets done, but you haven't considered that—

Mr. Rénald Gilbert: If we did it at the beginning, we would have to do it a second time at the cost of the client, and with no use for it really.

Ms. Olivia Chow: I will come to the issue of spouses. Your rejection rate two years ago was something like 52% or 56%. This year it has gone up. What percentage is it? You say you have serious fraud concerns with 60% of your movement. What is your final rejection rate? Is it probably 60% or 70% or so for Hong Kong?

Mr. Jim Versteegh: Actually, the refusal rate is going down. In 2010 it was 47%, and we expect it will slowly continue to go down.

Ms. Olivia Chow: Okay. It was 52% or something like that.

Mr. Jim Versteegh: It has been higher in the last two years, but because we have been very vigilant, we are now receiving fewer applications in that category. It's not the legitimate cases who are no longer applying; it's the ones who now understand it is more difficult to fool us.

The Chair: Thank you.

Thank you, Ms. Chow.

Mr. Shory and Dr. Wong, you have a total of five minutes.

Mr. Devinder Shory (Calgary Northeast, CPC): Good morning, Mr. Chair.

Thank you to the witnesses for staying awake a little late to help us.

I'll come straight to the question. It seems that Hong Kong has quite a number of investor category applications. In the opening comments I heard that there were almost 9,000 applications before the moratorium started, and the numbers dropped after December 1. Also, I heard that Hong Kong still expects that the growth could come back to the original number.

From December to today, March 3, do you see any numbers coming back to the normal trend before June 2010?

Mr. Jim Versteegh: Frankly, I'd be very surprised if they went back up to the numbers of the first half of 2010. As I mentioned, we're now averaging about 300 a month. There may be further increases, but I really don't believe that they will get out of hand the way that they were before the moratorium. Indications are that we will likely stay at about that level, but of course it depends to a certain degree on the degree of dissatisfaction in China. If there were to be some kind of disruption and people were more inclined to leave, or if there were greater activity on the part of consultants in China to advertise the program, it is conceivable that there would be a further increase, but we would be very surprised if it went back up to the pre-December 1 levels.

● (0915)

Mr. Devinder Shory: Is it correct to assume that with the recent increase in requirements in this category, the processing time should be reduced in coming days if the intake stays at a manageable number of basically 300 or so per month?

Mr. Jim Versteegh: It is difficult to make that conclusion at this point, given that we still have the large inventory of cases. We have almost 16,000 investor cases in our backlog. The oldest go back to 2008. We process the oldest cases first, so we will be processing fewer cases this year than we will be receiving new ones. At this time I can't predict what the processing times will be. Those that we do process will not be in process longer than in 2010, but as we get toward the end of the year and our targets are met and more applications come in, then the processing times may go a bit higher.

Mr. Devinder Shory: To me, this investor's category should be simple and straightforward, but you touched on some fraud issues also. I'd like you to shed some more light on the challenges you face in processing this category in a timely manner.

Mr. Jim Versteegh: In terms of fraud, our primary concern is the source of the money that they have. Given the very rapid development of the economy in China in the past 20 years, there are persons who have attained their wealth through unsavoury means, so our principal objective is making sure that we don't allow someone into Canada who obtained their money illegally or through means that we would not accept in Canada.

That said, it is not a particularly difficult movement in terms of fraud. Our refusal rate is only in the range of about 12%. Well, it's a little bit higher than that. It ranges from 12% to 18%. It's not particularly high, but we do need to be vigilant.

In terms of how long it takes to process, that depends to a certain extent on the inventories that we have. It doesn't take that long to process an individual case, but if we have thousands waiting to be processed and we have a limited number that we can process each year, then obviously—

The Chair: We're out of time.

Mr. Jim Versteegh: —those that are left over will take longer to process.

Mr. Devinder Shory: Thank you.

The Chair: If you have something for five to 10 seconds, you can go for it, Dr. Wong.

Mrs. Alice Wong (Richmond, CPC): I understand that marriages of convenience have become a big issue for applicants going through Hong Kong. There is evidence that it is organized.

Can you briefly comment, since we don't have a lot of time?

Mr. Jim Versteegh: It's certainly clear to us that it is organized, because there are patterns that we see, and that's what we use to identify the fraudulent cases. Quite frankly, we have numerous admissions from persons we have refused, who tell us that they paid $40,000 to $60,000 to an organization to arrange for the marriage and subsequent visa to go to Canada.

There's no question in our mind that it is an organized movement, and a very lucrative one.

The Chair: Thank you, Dr. Wong.

Mr. Oliphant has a brief question.

Mr. Robert Oliphant (Don Valley West, Lib.): It's just a brief question.

Thank you for being here today.

It relates to a number that you gave. You said that under the family class for parents and grandparents, your target for 2011 was 560. Was that correct?

Mr. Jim Versteegh: Yes.

Ms. Olivia Chow: Yes, that's what he said.

Mr. Robert Oliphant: The document that I have, dated January 6, which we got under access to information, said 450. That's dated January 6, so I'm wondering whether a new target has been set that we don't know about. It may be for Mr. Gilbert to answer. Could we have tabled, in this House, the actual numbers? That's a significant difference. It's a 25% increase over what we thought was the number from January 6.

● (0920)

Mr. Rénald Gilbert: First, I should clarify. As I think I mentioned last time, we do changes during the year, especially at the beginning of the year. Just in the parent and grandparents, we did 17 changes between January 6 to the one that we did on January 31. I have to check, but we have the new target for January 31. I mentioned it the other day. I thought we had sent it since last Tuesday, but I can make sure that you get it for the next time.

Mr. Robert Oliphant: If we could just have the most up-to-date numbers, that would be helpful.

Thank you.

Mr. Rénald Gilbert: Yes.

Mr. Robert Oliphant: It's just to clarify that the January 31 numbers are the most up to date, but the minister keeps changing his mind.

Mr. Rénald Gilbert: The minister has no impact on the individual target. The final decision on the target, so far, is done. Some of the analysts working for me do the tweaking, as we call it; otherwise, it's my decision.

Mr. Robert Oliphant: Those tweakings are several hundred families in my riding waiting for family sponsorship. It's not tweaking to them. That's my concern.

Mr. Rénald Gilbert: What I mean—

The Chair: Okay.

I have one final question to either Mr. Versteegh or Mr. Gilbert.

Is your office, Mr. Versteegh, processing the backlog of old investor-class applications before processing the new post-2010 investor cases?

Mr. Jim Versteegh: We are processing both at the moment. We're processing primarily old cases, because we have such a large backlog, but we're processing some of the new cases as well, to get both cases in process.

The Chair: But the old cases have priority.

Mr. Jim Versteegh: I suppose we're doing about twice as many old cases as new ones at the moment.

The Chair: Mr. Gilbert, I thank you for coming again as a regular attendee to the committee.

Mr. Versteegh and your colleagues in Hong Kong, I thank you for staying up late to provide us with the information you have. It's appreciated.

This committee will suspend for a few minutes.

● _____ (Pause) _____ ●

● (0925)

The Chair: We will continue.

We have representatives from the Immigration and Refugee Board of Canada with us this morning. Good morning to all of you.

Mr. Simon Coakeley is the executive director. Ms. Hazelyn Ross is the assistant deputy chairperson of the IAD. We have the legal advisor, Mr. Joel Rubinoff.

We have up to seven minutes for one of you to make the presentation to us. I don't know which one; it'll be a surprise.

Go ahead, Mr. Coakeley.

[*Translation*]

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

Good morning, everyone.

My name is Simon Coakeley. I am the Executive Director of the Immigration and Refugee Board of Canada, or IRBC. I am the Board's Chief Operating Officer and I am responsible for the performance of the Board's adjudicative support, registry and corporate support services. I report directly to the Chairperson, Mr. Brian Goodman.

As has been mentioned, I am joined today by Ms. Hazelyn Ross, our acting Deputy Chairperson of the Immigration Appeal Division, or IAD, as it is known, and Mr. Joel Rubinoff, one of our legal advisors who focuses primarily on the IAD.

We are very pleased to be here to try to help the committee with its study of immigration application process wait times. I would however like to note that one of the focuses of the committee, business applications, is an area where IRBC has no jurisdiction.

As the committee is probably aware, the Board is currently composed of three divisions, the Refugee Protection Division, the Immigration Appeal Division and the Immigration Division. In the last fiscal year, our divisions finalized more than 55,000 cases, 7,200 of which were at the IAD.

The IAD hears appeals from decisions that have been made by Citizenship and Immigration Canada at a visa post in the case of refused sponsorships; by officers of CIC or the Canada Border Services Agency in the case of residency obligation determinations; and by the Immigration Division in the case of removal orders. Rarely, the IAD hears appeals brought by the minister against a decision made by the Immigration Division.

Hearings at the IAD are adversarial and appellants are often represented by a counsel. The minister, represented by the Canada Border Services Agency, is always a party. In sponsorship appeals, CBSA represents the minister of CIC, and in removal appeals, CBSA represents the minister of Public Safety.

When a sponsorship application is refused by CIC, the sponsor may appeal to the IAD. The family member and the sponsor will have to prove that they meet the legal requirements in order to immigrate, and in the case of marriage appeals, the spouses will have to establish that their marriage is a genuine one that was not entered into primarily for immigration purposes.

The IAD cannot issue a permanent resident visa; only CIC can issue visas. So, if the sponsorship appeal is successful, the application must go back to the visa post for further processing. Therefore, the delays in the processing of permanent resident visa applications are independent of the will of the IAD.

In the case of removal order appeals, the IAD is responsible for hearing the appeal of a foreign national, protected person or permanent resident who is facing removal because of a contravention of the Immigration and Refugee Protection Act or for criminality. The original removal order is made by an officer of CIC or of the Canada Border Services Agency or by the Immigration Division.

The IAD determines if the decision to remove the appellant is legally correct and also considers if there are humanitarian and compassionate reasons why the appellant should not be removed. In deciding whether to allow an appeal based on humanitarian and compassionate grounds, the IAD always bears in mind its obligation to protect public safety, as well as its obligations to apply existing law on humanitarian factors, including the obligation to consider the best interests of a child.

In the event that the IAD confirms the removal, the timing and execution of removal orders is the Canada Border Services Agency's responsibility, and not that of the IAD.

● (0930)

[*English*]

As the committee is aware, permanent residents are required to be physically present in Canada for a minimum period of time, which is generally 730 days over a five-year period. If an officer of CIC or CBSA determines that a permanent resident has not lived up to this obligation, the permanent resident may appeal that determination to the lAD. These appellants are almost always abroad at the time their appeal is heard. For their appeal to be successful, they need to establish that they have complied with the residency requirement or that there are humanitarian or compassionate grounds to maintain the permanent residency status.

Since the Immigration and Refugee Protection Act came into effect in 2002, there has been a 60% increase in appeals filed at the lAD, and sponsorship appeals account for approximately 70% of the caseload. For a number of years the lAD did not have a full complement of members; consequently, a backlog of cases developed.

The lAD sets very clear productivity targets for its members, which are routinely met and often exceeded, and we now have close to a full complement of 37 members; however, even with our members meeting or exceeding their target of finalizing 150 cases per year, we are not going to be able to eliminate the backlog within our current funding model.

To handle its caseload in the most efficient way possible, the IAD has developed different resolution streams for dealing with appeals, based on their complexity and the probability of quick resolution. In addition to oral hearings, these streams include early informal resolution—which includes alternative dispute resolution, or ADR—and written proceedings. Early informal resolution is a process that encourages parties to make early disclosures of relevant materials. This process assists in narrowing the issues and in focusing the appeal, and it contributes to a quicker hearing.

ADR is used in selected marriage appeals. It is a form of early informal resolution through which the IAD brings the parties together and encourages them to look realistically at the strengths and weaknesses of their positions so that appellants can withdraw weak appeals and the minister can consent to appeals when the facts are strongly in the appellants' favour.

While the parties are brought together by the IAD, it is important to note that an appeal can only be allowed at ADR if the minister agrees.

The opportunity given to appellants to realistically assess their appeals and to withdraw weak ones is beneficial to the parties and to the division, as it allows appellants to save time and money if the outcome is almost certain failure. It also allows both CBSA and the IAD to direct limited resources elsewhere.

Another advantage of ADR to both the IAD and the parties is the fact that the average processing time for sponsorship appeal resolved through a normal hearing is 13 months, while the average processing time for an appeal resolved in ADR is six months.

To avoid unnecessary oral hearings, appeals concerning a single issue can often be resolved in chambers via written arguments and submissions. In these cases the IAD member renders a decision in the matter based on the written record. The IAD regularly engages with the counsel community and with CBSA to seek out and promote more efficient ways of processing appeals. The IAD is committed to maintaining high levels of productivity while running fair and efficient proceedings in which we carry out the objectives of IRPA, which include seeing that families are reunited and that the health, safety, and security of Canadians are protected.

We provided additional statistics and information to the committee ahead of time on the work of the IAD.

Mr. Chair, thank you again for inviting us to meet with you today. My colleagues and I would be very pleased to answer your questions.

The Chair: That was perfect timing, Mr. Coakeley. You must have practised.

Mr. Simon Coakeley: A few times.

The Chair: You covered a lot of ground in seven minutes. Congratulations to you.

The committee has some questions.

Go ahead, Mr. Oliphant.

Mr. Robert Oliphant: Thank you, Mr. Chair.

Thank you for your report, Mr. Coakeley.

I want to focus a little on sponsorship appeals so that we can get our heads around that.

I'm less interested in the number of appeals filed and the number of verdicts or decisions reached than in the quality or the nature of the decisions reached. That relates to wait times and whether wait times are appropriate or inappropriate.

I don't know if you have the numbers for 2010 or not. In 2010, how many sponsorship appeals would have been returned as decisions or as finalized cases in 2010?

● (0935)

Mr. Simon Coakeley: The numbers I have go by fiscal year, I'm afraid, not by calendar year.

Mr. Robert Oliphant: Would you give us the numbers for fiscal year 2009-10, then?

Mr. Simon Coakeley: In 2009-10, 4,423 sponsorship appeals were filed and 4,629 would have been finalized. The ones finalized would probably have come in this fiscal year.

Mr. Robert Oliphant: Thye'd be from another year, so they would have been there for a while.

There were 4,629 filed. Do you have a breakdown in the different classes? How many of those would be spousal and how many would be parent and grandparent?

Mr. Simon Coakeley: I do not have that information here. Perhaps Ms. Ross might have a sense.

Mr. Robert Oliphant: Approximately how many would it be? Would it be 10%, 90%, 20%, 80%, 30%, 70%?

Ms. Hazelyn Ross (Assistant Deputy Chairperson (IAD), Immigration and Refugee Board of Canada): I would say that at least 80% of our sponsorship appeals are spouses.

Mr. Robert Oliphant: So it's about 80% spousal and 20% family and grandparent. Of those 4,629 cases that were finalized, how many of the decisions of CIC officials were upheld and how many were overturned?

Mr. Simon Coakeley: I'm afraid I don't have that information here with me.

Perhaps Ms. Ross could tell you something, just from a sense of the hearings.

Ms. Hazelyn Ross: Yes, I could give you a sense of the hearings. I believe that roughly 30% of the sponsorship appeals are allowed, about 40% are dismissed, and the remainder are withdrawn or abandoned. Those were probably weak appeals.

Mr. Robert Oliphant: Of the 30% that are upheld, would they mostly be family, grandparents, and parents?

Ms. Hazelyn Ross: No, they would be mostly spousal. It would be the whole gamut, but the bulk of the appeals are spousal appeals.

Mr. Robert Oliphant: If 30% are allowed, it means that three times out of ten, a decision made by the officials has been wrong.

Ms. Hazelyn Ross: I wouldn't say that the decisions made by the officials were wrong. In most cases, the decision made by the visa officer, the immigration officer, is correct, because the decision was based on the facts that were before him. The facts in front of the IAD may be quite different, because by this point the appellant and the applicant have been together for a longer time. They provide us with more information and sometimes different information than what was before the immigration officer.

Mr. Robert Oliphant: All right, so one of the problems on wait times is perhaps that the applicant is not supplying the right information in a timely fashion to the officials.

Ms. Hazelyn Ross: It may well be, but I can't say. They are providing sufficient information for us to be able to make an appropriate decision.

Mr. Robert Oliphant: My worry would be that the questions aren't being asked appropriately. I don't know whether the onus is on the applicant. It's a Canadian citizen trying to sponsor a parent, a grandparent, or a spouse, and they're attempting in good faith to do that. I'm wondering where the problem is. This is a problem with wait times. If I'm rejected and then I have to appeal, and the appeal procedure takes a considerable time, this is a concern. Your appeals have gone up significantly since 2002, and we don't have infinite resources.

I would like to say that my thoughts of efficiencies are not so much on cases brought in and cases resolved. My concept of efficiency goes beyond the appeal division to the whole system. I am concerned with how well we are doing at processing people from the time they apply until an ultimate decision is made in Federal Court. I would like some statistics. When I was on veterans, we got the Veterans Review and Appeal Board statistics on how many appeals were allowed or dismissed. It would be helpful if we could get some numbers.

Mr. Simon Coakeley: We should be able to provide that information. I'm sure you can appreciate, though, that what happens before and what happens after....

Our focus must be on those files that are on our shelves. We have an obligation to deal with them.

● (0940)

Mr. Robert Oliphant: Our job is to look at what happens before; you just tell us that middle section of the appeal.

Finally, do you find that judicial review is a nuisance or a bother in your work?

Ms. Hazelyn Ross: No.

Mr. Robert Oliphant: The minister has been clear that he is finding judges are in the way of processing applications. The minister has been clear that judges are a huge problem. I don't know whether you're a problem as well. How do you feel about the role of the courts? Is there a role for the courts in immigration?

Ms. Hazelyn Ross: I believe that the courts are helpful in delimiting for the IAD its boundaries, its jurisdiction. It gives us guidance on the case law, it helps our jurisprudence, and it helps the way we develop and function as a quasi-judicial tribunal.

I wanted to mention something else. Mr. Oliphant, you asked a question about the type of information that the visa office uses to make its determination; I hope you understand that the onus is on the applicant to provide the visa officer with sufficient information.

The Chair: Thank you.

Thank you, Mr. Oliphant.

[*Translation*]

Mr. St-Cyr, you have seven minutes.

Mr. Thierry St-Cyr: Thank you.

I listened to your presentation, and I was very much interested in the part relating to alternate measures allowing for an accelerated processing of appeals: the alternative dispute resolution mechanism, the rapid and informal resolution and procedures based on facts which, if I am not mistaken, can work something in the way of conciliation.

Could you tell the committee what percentage of disputes go through this process initially, and what the success rate is, in other words the percentage of disputes that do not go beyond this stage?

Furthermore, you mentioned that even if the dispute is not resolved through these means, the resolution of the appeal through a hearing could nevertheless be accelerated. Could you illustrate this acceleration with some numbers?

Mr. Simon Coakeley: Yes. Please forgive me, but I do not have here with me the numbers with regard to the percentage of cases that are channelled towards alternative dispute resolution.

Mr. Thierry St-Cyr: Is the proportion marginal? Would it be half or the majority of cases? What do the numbers look like?

Mr. Simon Coakeley: I would ask my colleagues to respond to that question.

[*English*]

Ms. Hazelyn Ross: In terms of the ADR procedure, I would say that roughly 30% of sponsorship appeals that are filed do go through an ADR process.

I'm sorry, you'll have to repeat the remaining questions because I was having trouble—

[*Translation*]

Mr. Thierry St-Cyr: Of these 30% of cases that go through the ADR process, how many of them are successful? In other words, in how many cases is there no need to move on to the next step, either because the minister allowed the appeal or the appellant withdrew it?

[*English*]

Ms. Hazelyn Ross: Roughly 44% of all appeals that go through ADR are successful. Success, though, in terms of the IAD, includes those consented to by the minister and those in which the appellant withdraws the appeal. I can't give you more of a breakdown than that. That's how we measure success; we do it globally, unfortunately, but we can get the breakdown for you.

[*Translation*]

Mr. Thierry St-Cyr: Yes, I would like to know the success rate.

Also, when this process does not work, when it is unfruitful, it appears to me that it nevertheless speeds up the processing time through a hearing. To what extent is that true, and could you illustrate the situation with numbers?

[*English*]

Ms. Hazelyn Ross: Yes, we do. We do it in hard numbers.

I'm sorry; if I had known you would want this information, I'd have brought it with me.

We do get the hard numbers of how many were withdrawn successfully or how many were consented to by the minister. I can say that for this fiscal year so far, we have roughly 567 cases being resolved in ADR, and that includes our minister's consents and people who have withdrawn their appeals because the appeals are weak.

● (0945)

[*Translation*]

Mr. Simon Coakeley: I would like to add that if the alternative dispute resolution hits a snag or is not successful, a hearing is always possible in the end. At least the parties will have had the opportunity, and that stage, to hear the information from both sides. This can be helpful, in circumscribing the problem, when the appellant is allowed a full hearing in the appropriate format. We are of the view that even if the parties do not agree at the alternative dispute resolution process level, even in such circumstances, this helps us to resolve the case more effectively.

Mr. Thierry St-Cyr: What allows one to follow the alternative dispute resolution path?

Mr. Simon Coakeley: It is the Board that calls the parties to a meeting...

Mr. Thierry St-Cyr: You therefore carry out a summary examination of the application and judge whether or not the players can agree without having to go through the process.

Mr. Simon Coakeley: Indeed. It is the evaluation done by an official from the Board that determines if the case could be resolved through alternative dispute resolution measures. In such situations, the different parties are called in and it is the official who presides, and not a member of the division. The parties exchange information and the appellant decides if he or she wishes to withdraw the appeal, when it is weak, or else, as Ms. Ross stated, the minister may consent to the appeal.

Mr. Thierry St-Cyr: You have therefore most certainly determined that the effort involved in doing this triage is greatly inferior to what you save...

Mr. Simon Coakeley: It is much less, it costs an awful lot less. Indeed, we do not take up the time of a division member, but that of an official who earns a little less than a division member.

Mr. Thierry St-Cyr: This is very interesting.

With regard to these fast track methods, you also talked about appeals being resolved "in Chambers". If I am not mistaken, there is no need for a hearing in such cases. The commissioner studies the written arguments and submissions. What is gained here? What takes time? Is it the hearing or the waiting period in order to get a hearing that we are trying to avoid?

[*English*]

Ms. Hazelyn Ross: The IAD is trying to reduce the backlog and work more efficiently, and the way we can do that.... You see, sometimes a single issue is just one legal question—

[*Translation*]

Mr. Thierry St-Cyr: I understand that. I want to know what the situation is with regard to time saved, because a hearing does not necessarily last very long.

[*English*]

Ms. Hazelyn Ross: It is both.

[*Translation*]

Mr. Thierry St-Cyr: It is both.

[*English*]

Ms. Hazelyn Ross: It is in terms of both wait time and efficiency.

[*Translation*]

Mr. Thierry St-Cyr: We are talking about an effort per se.

Mr. Simon Coakeley: The organization of a hearing entails ensuring the presence of a member, sometimes of an interpreter, of the appellant, of the appellant's lawyer and of the representative of the department. All of these individuals must be in one and the same place at the same time. The organization of all of that takes time, whereas, in the case of a written decision, one need only present the file to a member. He or she may deal with it in the course of a work day.

[*English*]

The Chair: Thank you, Mr. Coakeley.

Go ahead, Ms. Chow.

Ms. Olivia Chow: It sounds as though there are a lot of figures. For a year or two I was trying to get to these numbers through then Standing Order 43 to find out how many were approved and how many were not, meaning the 30% approved and the 40% dismissed.

Do you have an annual report that gives all these figures for the last five years, for example, broken down by country, on how many were approved through the alternative dispute resolutions, etc., and lessons learned on each of them? Do you have that kind of data? I think the two previous questioners asked a lot about data. I haven't been able to obtain the data, even through Standing Order 43. Does your organization have a report with all this information?

Mr. Simon Coakeley: I'm just going by memory. The report on plans and priorities definitely does not go into that level of detail, and I believe that our departmental performance report does not go into that level of detail. Both of those, of course, are documents tabled in Parliament.

Ms. Olivia Chow: They do not have it. I've looked.

Mr. Simon Coakeley: We don't publish a document that goes into that level of detail, but for our own internal purposes we look at the numbers. We can provide those numbers to the committee after this morning's session, by all means.

The Chair: Please give them to the clerk as soon as possible.

Mr. Simon Coakeley: We'll do that.

Ms. Olivia Chow: Of the decisions you made—the 30% that were approved—let's say 5% of them were from the visa office in Hong Kong, just for argument's sake. There would be learning from that region, because some of the visa officers might ask for more information or provide the entire reason that they were turned down, and that would go back to the visa office. Is there a study or a process in place so that we could consistently improve the system based on what you learn?

● (0950)

Mr. Simon Coakeley: We do not see, as part of our responsibilities as an independent administrative tribunal, telling CIC that this is a lesson we think they should learn. We expect that CIC would pick that up from our decisions.

On the other piece, I would echo what Ms. Ross said. At an appeal level, just because the appeal level overturns the first decision—

Ms. Olivia Chow: I totally understand that it's not your role to do that, but do you provide a reporting system so that if the deputy minister chose to or if we asked him to or if the minister wanted to, they could take the information and assist the regional officers to perhaps have a different way of asking questions or making decisions?

Mr. Joel Rubinoff (Legal Advisor, Immigration and Refugee Board of Canada): Excuse me. It's my understanding that our decision of the IRB, whether we uphold or—

Ms. Olivia Chow: It's public anyway.

Mr. Joel Rubinoff: —allow or reject an appeal goes back to the visa post. They would see the decision and they would be able to look at the decision and decide whatever they wished to do with respect to whatever remedy they wanted to take from our reasons for the decision.

Ms. Olivia Chow: I see. Then I really shouldn't be asking you the question; I should be asking the other folks whether they then take the findings.

What period was it that you did not have the full complement of members and consequently a backlog of cases developed?

Mr. Simon Coakeley: That would have been over the last four or five years. It was the same phenomenon, as the committee is aware, that we had at the refugee protection division. Both the IAD and the refugee protection division are Governor in Council appointees. That period of time when we were experiencing a lack of members in the RPD was the same period of time that we were experiencing a lack of members in the IAD.

Ms. Olivia Chow: As a result, your backlog grew. Prior to that, how fast were you resolving cases? Right now it's over 13 months, at least, for an oral appeal. Right now it's one and a half years or so to get the case resolved. If I filed the appeal today, one and a half years later it would be done. That's about the average.

What was it four or five years ago, on average?

Mr. Simon Coakeley: I believe a chart was provided to the committee ahead of time in which we provided the average processing times for appeals by fiscal year. In this case it was by calendar year. For example, in 2005 our average processing time for sponsorship appeals was 8.4 months, and it has grown now to 11.2 months. Of course, part of this is the result of the increase in volume as well.

Ms. Olivia Chow: Right.

Mr. Simon Coakeley: As the mix changes, that can also have an impact.

Ms. Olivia Chow: I haven't seen that chart, Mr. Chair.

Okay, you mean that one. Thank you.

A timeframe of 11.2 months is still fairly long. I see that you have various pilot projects, etc. As part of your work plan in 2011-2012, what would be your ideal timeframe? For a while, when you first started, it was six months. It was a much shorter period, wasn't it? Then it just grew. What would you need to clear the backlog and actually go back to, let's say, six months on average? What would you need in order to do so?

Mr. Simon Coakeley: Given the volume of files that we have, we would probably need to almost double the size of the organization in order to clear out the backlog. In the current financial climate, we recognize that's not likely to happen.

Ms. Olivia Chow: Do you expect more appeals to be coming in? You probably do. Do you have any projections? I suppose it's hard to say.

● (0955)

Ms. Hazelyn Ross: It's difficult to say, because a lot depends on what happens in the world. I'm expecting that we will have appeals, perhaps, from permanent residents who are in the Middle East and want to come back. If there is a natural disaster somewhere in the world, there are more appeals. Personally I'm expecting that we will get more residency obligation appeals out of the Middle East situation.

The Chair: Thank you.

Mr. Rubinoff, what proportion of the decisions are published?

Mr. Joel Rubinoff: All of the decisions of the IAD go to CanLII. They're available in due course on CanLII, which is a website. They're also available through Quicklaw, which is a paid subscription, while CanLII is a free subscription. We have a publication called RefLex; we look at significant cases and put them in that digest, but only a small proportion end up in RefLex.

The Chair: Ms. Grewal, you have up to seven minutes.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): Mr. Chair, I'll be sharing my time with Mr. Dykstra.

My question is regarding refugee claimants. Could you tell us how a large influx of refugee claimants—say, about 500 or 1,000 additional claimants per year—would affect processing times in a local area like B.C. or Nova Scotia?

Mr. Simon Coakeley: An influx of refugee claimants wouldn't have an immediate impact on the immigration appeal division, because that would be handled by our refugee protection division. However, once people are granted refugee status, they become permanent residents in Canada and at that point are able to sponsor family members to join them. If those family members are then denied, that would become an issue for the immigration appeal division.

Given that at the moment our average processing time for refugee claims is 22.5 months, in the current scenario you wouldn't see an impact on the appeal division for probably a couple of years. When the Balanced Refugee Reform Act comes into force and the new timelines kick in, the process will be much quicker, obviously, so the potential impact on the immigration appeal division would be seen in a shorter period of time.

I couldn't say that 500 additional refugees would translate into a specific number of appeals at the immigration appeal division, because it very much would depend on how many family sponsorships they wanted to do, how many were accepted or rejected, and if rejected, whether they chose to appeal. I'd be pulling a number out of thin air.

Mrs. Nina Grewal: Ms. Ross, do you have anything to say on that?

Ms. Hazelyn Ross: No, I don't. I think Mr. Coakeley has covered it quite well.

Mrs. Nina Grewal: Thank you.

Go ahead, Mr. Dykstra.

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

Now that you've started in on the new refugee reform legislation, I have a couple of questions I want to ask you about. I wanted to ask you a question to follow up on the IAD questions that have come forward.

The Canadian Bar Association is actually appearing before us next. I wanted to read to you one of the points they have in their letter and get your comments, if I could.

> It is our understanding that redetermination decisions following successful IAD appeals will now be processed at national headquarters rather than by the visa office that rendered the initial refusal. We commend CIC on this initiative and recommend expansion of this pilot project to include all missions as soon as possible.

I'm wondering if you could enlighten the committee a little bit on what they're referring to.

Mr. Simon Coakeley: Mr. Rubinoff might want to come in on this in a minute.

It's my understanding that currently a visa application, particularly a sponsorship appeal, can be denied on a particular ground. That can come to the IAD. The IAD reviews it, hears the additional evidence, and overturns the original decision. It goes back to the visa post, and then a second denial is made on a different ground.

Is that...?

Mr. Joel Rubinoff: That's correct. Let's say that we allow an appeal. Generally it has to go not through us but through, I believe, the local CBSA and CIC back to the visa post. It has to get there. It then is redetermined. They then continue with the processing, taking into account our decision. Then they decide whether to grant the permanent resident visa or deny it on another ground. If they deny it on another ground, there then is a right of appeal, and it comes back to the IAD.

My understanding from the letter from the Bar Association is that instead of, in some cases, sending it back to the visa post, they're now going to process it centrally, as indicated in the letter.

● (1000)

Mr. Rick Dykstra: Are you comfortable with that process?

Mr. Joel Rubinoff: It is for CIC to decide the appropriate process.

Mr. Rick Dykstra: In other words, do you think what they have suggested is, in fact, working?

Mr. Joel Rubinoff: CIC proceeds and has been proceeding that way for many years. They have decided to change it for whatever reason, and it appears that the Bar Association favours it, so it would appear that the change will decrease processing and will be more efficient. That's all I can take from that letter, but I have no particular knowledge as to the changes being proposed.

Mr. Rick Dykstra: Thank you.

You touched on Bill C-11. I wonder if you could comment on how, from the board's perspective, C-11 will affect processing times for refugee claimants.

Mr. Simon Coakeley: Bill C-11will have a huge impact on refugee times at the RPD. In fact, we were discussing it yesterday at our chairs' management board.

As I indicated earlier, the current average wait time for a hearing is about 22.5 months. As you know, under Bill C-11 we will have to conduct an initial interview within 15 days of the claim being referred to us. Depending on whether the person is from a designated country of origin or not, the hearing would commence either 60 or 90 days after the interview. We expect that approximately 80% of decisions will be rendered from the bench at the hearing, and that is going to be our working target.

Once the claimant has the written copy of the decision in hand, from the regulations that CIC will be proposing, we understand they'll have 15 days to file and perfect their appeal. It again depends on where the person comes from; if the person is from a designated country of origin, the new refugee appeal division would have to render its decision within 30 days. If it's a case that doesn't come from a designated country of origin, the decision could be in up to 120 days.

As you can see, if you add up all of the numbers, it still comes to a significantly lower number than the current 22.5 months.

For the committee's information, when Brian Goodman, our chair, appeared before you on Bill C-11 back in the spring, there was a discussion about our staffing processes. I'd like to confirm for the committee—

Mr. Rick Dykstra: I was actually going to ask you to update us, because we're obviously moving from a somewhat appointed system to a permanent system.

The Chair: We're running out of time.

Mr. Simon Coakeley: I'll quickly answer.

For our deputy chair position and for assistant deputy chairs, it was an external competition that was open to all permanent residents of Canada and Canadians anywhere in the world. The competition is closed, and we're in the selection process. The member position and the coordinating member positions are currently open. We have parallel processes within the public service and an external process that's again open to all permanent residents of Canada and Canadians. In a few weeks, we will be launching our interview process, which will again be parallel.

The Chair: Thank you.

Mr. Wrzesnewskyj, you have two minutes.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Is one of the guiding principles for IRB officials when hearing cases that they are to approach the cases in an impartial manner?

Ms. Hazelyn Ross: Yes, of course.

Mr. Borys Wrzesnewskyj: Thanks.

You're saying each case is approached strictly on a case-by-case basis.

Ms. Hazelyn Ross: Yes.

Mr. Borys Wrzesnewskyj: In regard to the dozen or so Iraqi war resisters in Canada, who make up less than 0.5% of the backlog, Ms. Elizabeth McWeeny, president of the Canadian Council for Refugees, stated that their numbers are minuscule and have no appreciable impact on delays in the system.

She said the 0.5% is minuscule and has no appreciable impact. Would you agree with that statement?

Mr. Simon Coakeley: I'm not exactly sure what she's referring to, but 0.5% of our caseload is comparatively small and should have a minimal impact on the overall delays, yes.

Mr. Borys Wrzesnewskyj: Thank you.

A couple of days before an Iraqi war resister's hearing before a board, when Minister Kenney stated that these cases of Iraqi war resisters were “clogging up the system”, it was political fluffery.

The Chair: I don't know whether that's fair. I'm going to end this. I think we'll end it on the word “fluffery”.

I'm sorry, Mr. Wrzesnewskyj; we're getting into politics, and I think it's unfair to these witnesses.

I'm going to suspend the meeting.

Thank you very much for coming.

● _____ (Pause) _____ ●

● (1005)

The Chair: Okay, ladies and gentlemen, we're going to reconvene. We're going to end this at 10:40 to do some committee business.

We have the Canadian Bar Association. I recognize two people who have been here before. I'm not sure, and maybe you've all been here, but I certainly recognize Kerri Froc, who's a staff lawyer of law reform and equality. Good morning to you.

We also have Chantal Arsenault, who's the chair of the national citizenship and immigration law section. I'm pretty sure you've been here before. Good morning to you. Also with us is Deanna Okun-Nachoff, executive member the national citizenship and immigration law section. I'm not too sure about you, but welcome.

One of you has up to seven minutes to make a presentation to the committee. Thank you for coming.

Ms. Kerri Froc (Staff Lawyer, Law Reform and Equality, Canadian Bar Association): Mr. Chair, we're going to split the time between us, but we'll take the seven minutes.

The Canadian Bar Association is pleased to appear before this committee today on its study regarding immigration application process wait times, particularly for the investor class and family class applicants.

The Canadian Bar Association is a national voluntary association with about 37,000 members across the country. The citizenship and immigration law section is made up of about 900 lawyers with expertise in all areas of citizenship, immigration, and refugee law. The primary objectives of the organization are improvements in the law and the administration of justice. In that light, our representatives are here today with some practical suggestions on how to mitigate the impact of delays on applicants and on how to streamline the system.

For the purposes of our appearance today, we've circulated to you our written submission. The chair of our citizenship and immigration law section, Chantal Arsenault, and our executive member, Deanna Okun-Nachoff, will take you through the substance of our submission and answer any questions you may have about it.

With that, I'll call upon Ms. Arsenault to start off with our substantive comments.

[*Translation*]

Ms. Chantal Arsenault (Chair, National Citizenship and Immigration Law Section, Canadian Bar Association): Good morning. I am pleased to be here this morning to share with you our views on immigration application process wait times, and to offer you a few suggestions of ways to reduce these wait times for applications under the family class or the investor class.

● (1010)

[*English*]

We understand that finding a balance between all priorities in immigration is difficult. We also understand that if everything is a priority, then nothing is a priority. Allocating resources, processing applications in an efficient way, assessing the risks involved, and respecting goals and targets—these are formidable challenges. We hope, however, that our suggestions can be put to use to alleviate the impact of long wait times, and we are happy to continue the discussion on those subjects.

Allow me first to touch on investors. As we indicated in our submissions, we strongly believe that if the government has determined that the investor class and the entrepreneur class are beneficial to Canada and should remain an option, immediate steps should be taken to ensure that CIC can process applications in a reasonable timeframe so that they make business sense for those willing to embark on the process. Long processing delays seriously undermine the viability of these programs. If who we want are the best and the brightest, we cannot make them wait around for years. They have other options; they will decide to invest in other countries, and this will be our loss.

We realize that investor files are complex. Applications typically contain a large number of documents, and the requirements to evaluate and assess the proof of funds and the value of business can be time-consuming. We suggest that applicants should be given the option of providing an expert report from an authorized third party, thus reducing the amount of work required by the officer. This model of delegating a portion of the examination to industry experts has been adopted by CIC in other areas, such as language testing.

[*Translation*]

We would also suggest that the assessment of the source of funds carried out by the ministère de l'Immigration et des Communautés culturelles, in those cases originating from Quebec, be taken into consideration and granted the evidentiary weight it deserves. Our analysis tells us that these cases should not take up officers' time unnecessarily.

[*English*]

It is the prerogative of the government to decide whether it supports one program or another. If the decision is to offer the program, in order for the program to be a viable option it must be implemented in such a way as to be transparent and efficient, with realistic targets and timelines. This is true for the investor program as much as it is for other categories such as family class, including applications for parents and grandparents.

I will now give the floor to my colleague Dianna Okun-Nachoff, who will discuss the issues regarding family class applications.

Ms. Deanna Okun-Nachoff (Executive Member, National Citizenship and Immigration Law Section, Canadian Bar Association): Thank you for the opportunity to address you today.

I'll jump right in, beginning with our recommendations for the high-priority so-called FC1 applications for the spouses and dependent family members.

It is our understanding that the benchmark for processing of these priority family class applications is six months and that many visa offices are meeting or even beating this target, while others are falling far short. Given the obvious hardship of prolonged separation from beloved spouses and children, sponsors must be reunited with their family members as quickly as possible. The existing disparities in processing times across the different missions must be addressed.

Disproportionate delays are also faced by the FC1 applicants who are refused at the first instance but then succeed on appeal to the immigration appeal division. It's our understanding that the department has initiated a pilot project whereby these redetermination requests, following a successful IAD appeal, will be sent to national headquarters for processing and not back to the visa office. We do commend the department for this initiative and we recommend that this pilot project be expanded to all visa offices as soon as possible.

We also recommend that new forms, including updated work histories, medicals, and police clearances where required, be requested up front, at the conclusion of a successful IAD appeal, to facilitate these redetermination decisions.

I'll move on to the more contentious FC4 category, and that's the parents and grandparents. Simply put, processing delays in the FC4 category are so long that they fundamentally undermine the viability and the utility of this program as a whole. Surely you've heard it said many times before that too many applicants are deceased, medically inadmissible, or simply no longer interested in coming to Canada by the end of the six-plus years of delay.

The reality is this: unless there is the will to increase the targets, we must ensure there are viable ways for families to reunite in the interim, during this lengthy period for processing of the permanent residence applications.

Immigration has encouraged visa offices to be more flexible in issuing long-term TRVs to FC4 applicants who are in the queue for landing, but our members continue to report that TRVs are still being routinely denied for parents who lack sufficient ties to the country of origin.

Our submission is that objective criteria should be employed, and visas issued, where FC4 applicants can establish, one, that they have been sponsored by an eligible family member; two, that their sponsor meets the minimum income requirements; three, that the applicant is not medically inadmissible; and four, that arrangements have been made for private health coverage.

Once a TRV has been issued on these criteria, we also recommend that the department not revisit the decision about medical admissibility when the PR application is finally determined.

These are some of our recommendations. Others are in our written submission.

At the end of the day, if targets remain fixed, the net result of processing deficiencies will be moot. They will remain a problem as long as the volume of applications received is larger than the targets that visa offices are permitted to issue.

● (1015)

The Chair: Thank you, to all of you.

Each caucus now has up to five minutes.

Go ahead, Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: Thank you, Chair.

I note in the brief that there's been a 60% increase in appeals and that 70% of those are sponsorship appeals. I also saw some statistics that said 40% of those appeals were overturned. Those appeals were in fact confirmed positively for the appellants, so that means about 28%, or almost a third, of the time we're actually getting it wrong.

You're saying it should take six to 12 months. How long would the process typically take to bring a spouse—a father or a mother of children—to Canada in this sort of situation?

Ms. Deanna Okun-Nachoff: You're talking about how long it takes when there's been a recusal—

Mr. Borys Wrzesnewskyj: I mean if they were recused and then had to go through the appeal process, etc.

Ms. Deanna Okun-Nachoff: The waiting times for an appeal are very regionally specific.

Mr. Borys Wrzesnewskyj: What are they for eastern Europe?

Ms. Deanna Okun-Nachoff: I mean in terms of where the appeal would be heard. Often it's a year before you get a hearing, and then there's the problem of having to get the file sent back to the visa office, so it is a substantial delay.

Mr. Borys Wrzesnewskyj: Could the process end up taking two or three or more years?

Ms. Deanna Okun-Nachoff: It could, easily.

Mr. Borys Wrzesnewskyj: If a third of these cases are overturned, doesn't that seem to indicate somehow that our officials in the missions overseas are getting it wrong way too often, and that perhaps there is an institutional culture that says it is safer to say no and get it wrong that way, and then people can appeal if they want to and let them sort it out?

Ms. Deanna Okun-Nachoff: This is a difficult one to answer, because we must remember that the appeals are hearings *de novo*, meaning there can be a lot of material before the IAD that wasn't before the visa officer. It is hard to make a general statement in answer to that question.

Mr. Borys Wrzesnewskyj: Some witnesses previously stated that when they read the decisions from the missions' officials, some of the statements are almost borderline racist, which I found quite disturbing to hear.

I will read you comments from an official at the mission in Kiev, Ukraine, where a father was denied the opportunity to reunite with his wife here in Canada—a Canadian wife—and their four children. They had just had twin infant boys:

> At such a young age, the best interests of the newborn twins is to remain with the mother, and it presumably makes little difference to them physically, emotionally, or developmentally whether this is in Ukraine or in Canada.

The official is denying the father the opportunity to come to Canada to be with his wife and four children. Instead, they are suggesting in their decision that the wife and four children move to Ukraine.

How would you view that sort of decision?

● (1020)

Ms. Deanna Okun-Nachoff: I don't think those are relevant criteria. There are very established criteria for when somebody is eligible to sponsor a family member. The relative benefits for those family members as to whether or not they should be reunited is really not relevant to that decision.

Mr. Borys Wrzesnewskyj: I find it incredible that an official in one of our missions would suggest that Canadian children, born in Canada to a Canadian wife, should move to Ukraine if she wants to reunite with her husband.

There is no criminality. There are no other issues around this case. It's just a decision that it's best for the kids emotionally and developmentally.

It goes on to say that:

> Ukraine is a developed country with advanced health and social services including pre-school and primary school education, medical care...and all the necessities for normal life. I therefore consider that the best interests of the children would not necessarily be better served by moving to Canada than remaining in Ukraine.

The Chair: Thank you, Mr. Wrzesnewskyj.

Monsieur St. Cyr is next.

[*Translation*]

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

Thank you for being here. I liked your presentation. It set out several concrete, practical and relatively simple proposals.

I would like to delve further with Ms. Arsenault into the matter of investor immigrants, including those for Quebec. I put questions to representatives of several Canadian missions overseas regarding what seems to me to be duplication. Indeed, the verification of the source of applicant funds is done twice. The answer I was given is that this verification is cursory and very brief and that officials trust in Quebec's verification. That is however not the feedback I got from people in the field.

In the context of your practice, within the association, is it your impression that a large number of the files approved by the Government of Quebec are once again processed by the federal government, that this only prolongs wait times and that this provides no added value?

Ms. Chantal Arsenault: It is to some extent for that reason that we have put forward our recommendation. If the evaluation already done by the ministère de l'Immigration et des Communautés culturelles were systematically granted the importance it warrants, then these files would not have to be reviewed with regard to this aspect.

Is it possible for us, from the outside, to know if these people have spent one, two or twenty days analyzing the issue before responding? We are clearly unable to know that. However, in my view, were there a clear directive in the case of those files or in that for which we are suggesting that a third party provide the assessment, then officials would follow it with the knowledge that that aspect has already been dealt with, and would move on to something else.

Mr. Thierry St-Cyr: Earlier today, we were also told, in response to questions, that even if the source of the funds is verified by the two levels of government, the approach used is different. The provincial government, in this case that of Quebec, verifies that the individual does indeed possess the declared assets and funds, and is eligible under the program. The federal government, however, concentrates more on the criminal aspect.

Is this verification not already done by the Government of Quebec? To your knowledge, does the Government of Quebec check to see if the funds are the product of criminal activities?

Ms. Chantal Arsenault: Absolutely. I think this verification must be done, because the selection criteria for investors in Quebec deal with the legal nature of the activities in question. This assessment must therefore be done in order to ensure that the funds come from legal and not illegal sources. That is part of the assessment that must be done by Quebec.

Mr. Thierry St-Cyr: In your view, it is therefore clear that it is not necessary for the federal government to redo the verification once Quebec has issued the selection certificate.

Ms. Chantal Arsenault: Once again, this is a risk that must be taken and balanced in order for our resources to be allocated based on a need that is real. If no verification is done elsewhere, then I would say that it would be much better...

Mr. Thierry St-Cyr: Once the Quebec process has been completed, does it ever happen that applicants are asked to provide additional documents, or that an additional federal process is launched, or is the assessment always done on the basis of the file supplied by the Government of Quebec?

Ms. Chantal Arsenault: It does happen, on occasion, that additional documents are requested, or even that a candidate is called to an interview to discuss security issues specifically. Obviously, this would be a review of the security aspect alone, and not the selection made by Quebec.

● (1025)

Mr. Thierry St-Cyr: Do you know what percentage of individuals selected as immigrant investors by Quebec are, in the end, rejected by the federal government?

Ms. Chantal Arsenault: I must admit that I do not have any statistics relating to that. I believe other witnesses would be better able to provide an answer.

Mr. Thierry St-Cyr: Very well. There is no problem; we will put the question to them.

Let us now move on to the proposal for facilitating the admission to Canada, at least temporarily, of those sponsored individuals who have been accepted based on that principle, in order that they be able to maintain ties with their children. What problems do these individuals face at present? Do you feel that the fact that they are in the process of obtaining permanent residence plays against them in their efforts to obtain a temporary resident visa in order to visit their family?

Ms. Chantal Arsenault: In 2002, when the law was changed, the double intent principle was established, and this did resolve a lot of issues. This principle authorizes an individual to have both the intent of becoming a permanent resident and the intent of obtaining a temporary resident visa, which has, it must be said, resolved certain problems.

However, the criterion that is often problematic for these applicants is that of the ties they have with their country of origin. The parents and grandparents who come to visit their family, their children and grandchildren in Canada, are generally no longer working and are therefore not tied to a job in their home country. These aspects can create problems in the decision-making and result in rejections, still today, despite the fact that there are directives in place that say that we should be helping these people.

[*English*]

The Chair: Thank you.

Go ahead, Ms. Chow.

Ms. Olivia Chow: Thank you.

You heard my question—I think you were still in the room—when we were talking about the immigration appeal division having the information sent to the visa office. One of your recommendations is that visa officers be encouraged to address the substance of the entire application and reasons for a refusal.

Don't they normally do that, or do they just say “refused” and not give the entire reason? Is it different in different visa offices or from officer to officer? Do you see a pattern there?

Ms. Deanna Okun-Nachoff: I would say that sometimes what you'll have is a decision on one ground saying that we are refusing on this basis. When it goes to the immigration appeal division, counsel may anticipate that further issues might be raised when the application goes back for redetermination. The challenge here is making sure that the IAD has jurisdiction to answer all of those issues so that you don't get a successful appeal on one issue that goes back for redetermination and then is refused on another basis and comes back to the IAD.

Ms. Olivia Chow: Oh, my gosh. Does that happen? You can just go back and forth forever.

Ms. Deanna Okun-Nachoff: It does happen.

We believe the jurisprudence says that in fact the IAD has jurisdiction for all those issues—

Ms. Olivia Chow: Right.

Ms. Deanna Okun-Nachoff: —but I think there would still be improved efficiencies in making absolutely certain that all issues can be addressed at one appeal and that the visa officer can cover all the eligibility criteria so that there's no doubt.

Ms. Olivia Chow: Don't they do that?

Ms. Deanna Okun-Nachoff: They do not always, no.

Ms. Olivia Chow: Why?

Ms. Deanna Okun-Nachoff: I couldn't venture a guess.

Ms. Olivia Chow: Do you find that the more comprehensive their reasons for disapproval, the fewer the chances for mistakes and the less chance the applicants will go for an appeal, because the evidence is stacked against them with so many reasons that they will decide to forget it? Then they would clear up some of the backlog. Wouldn't it be a good recommendation that all the visa officers, when they do a refusal, list all the reasons they have, or something like that?

Ms. Deanna Okun-Nachoff: Certainly.

Ms. Olivia Chow: Do you find, in your experience, that they learn from some of the cases that get sent back to them because the appeal has been successful? Then maybe their practice or their format... Maybe they would do more field interviews and therefore have fewer problems and less backlog. Do you find that?

Ms. Deanna Okun-Nachoff: I don't think I could say that I've seen a real change.

Ms. Olivia Chow: On the medical inadmissibility issue, your suggestion is that since they've been approved to come to Canada, and while they're waiting to come or the sponsorship application is being processed three years later, during that period—since they have already been approved to come to Canada and are arriving in Canada already, you don't need to....

They don't have germs, because they're clean, so to speak, or are cleared when they arrive in Canada. Do we now still ask them to do another medical, even though they're already in Canada and have a visitor visa? Do we still ask them for a medical clearance?

● (1030)

Ms. Deanna Okun-Nachoff: Absolutely.

Ms. Olivia Chow: Why?

Ms. Deanna Okun-Nachoff: I suppose it's because new issues could have arisen during that time period.

Ms. Olivia Chow: But that person is already in Canada.

Ms. Deanna Okun-Nachoff: Yes.

Ms. Olivia Chow: I see.

Ms. Chantal Arsenault: At this point, what we're suggesting is that we ask for a medical exam right from the start. That is not currently the case; it's not mandatory for everybody to have a medical exam to obtain a visitor record to come here. What we're saying is to get the visitor record under those criteria that we're suggesting, saying that we have verified a number of things and that as of today you don't have a medical issue and that your sponsor can actually pay for your stay here, and then later not revisit that.

The reason for what happens now is that we don't ask for the medical up front. The person could be here for six years, back and forth, and then a medical issue could arise after that long period of time, at which point they are denied.

Ms. Olivia Chow: So you're saying that since they are receiving a visitor visa, a temporary visa, to come to Canada anyway, we should have them do the examination and get it done; then you don't have to do it back and forth and just waste time. That's what your suggestion is.

Ms. Chantal Arsenault: Then they're not penalized for waiting six years and having their health status change over that long period of time.

The Chair: Thank you.

I'm sorry, but your time has expired, Ms. Chow.

Go ahead, Mr. Uppal.

Mr. Tim Uppal (Edmonton—Sherwood Park, CPC): Thank you, Mr. Chair.

Thank you all for coming.

I want to touch on something Ms. Chow was talking about: having parents or grandparents for whom the application is in process. The process takes a number of years, and so they would be able to come to visit their children or grandchildren here in Canada.

I agree with you in principle. It would be nice for them to come and visit with their children.

In my office, we've dealt with a couple of situations in which these people sometimes are older and their health situation can change in weeks or months. If they're on a three-month or six-month visa, their health situation can deteriorate.

You mentioned getting health insurance, and we've looked into situations involving health insurance. Sometimes with health insurance, it's the lawyer's job, or somebody's job, to make sure that what somebody thought was covered is in fact fully covered. It may not be completely comprehensive, or health insurance can actually be cancelled, many times, if you're here and you're not expecting any health problems.

We have dealt with a few cases of families in which the mother has had some health concerns and has gone to a hospital; they now owe $30,000 or $40,000 to the hospital, or to the Alberta or Ontario health system, and they don't want to pay, because it's difficult for them to pay this much money.

Do you have a suggestion for something like that? If we're going to give visas for parents to come, which I agree would be nice, there is this problem, this concern, about quickly changing health situations.

Ms. Chantal Arsenault: I think that what we're suggesting would answer your concern, mainly because right now it is not a requirement for people to have health insurance when they come to Canada as a parent or grandparent just to visit their children or grandchildren.

Mr. Tim Uppal: Health insurance that is available, from my understanding, sometimes is refused because they will say it was a pre-existing condition. There are other ways for health insurers to get out of paying. Also, health insurance can be cancelled.

Ms. Chantal Arsenault: I do understand that, and maybe we should get an insurance company to come and have that discussion at this point. I think that if you at least have a larger portion of people covered by insurance, it is likely that fewer issues would arise. That's why we're looking at that period when they're not covered by local insurance.

Mr. Tim Uppal: I want to ask you to expand on something. You commended the government for a pilot project for processing the applications, those IAD appeals, at national headquarters. Could you expand on that and what the benefits would be?

● (1035)

Ms. Deanna Okun-Nachoff: I think part of the issue that arises when they go back for redetermination at the visa office is actually transporting the physical file from the IAD back to the visa office. Sometimes there is a determination made at the visa office that another interview is required.

Again there are these delays if renewed police clearances or renewed medicals are required. All of these things really increase the processing delays that are experienced when a redetermination decision is made. We're looking for ways to streamline that. We think that centralizing the decision-making in Canada would be beneficial.

Mr. Tim Uppal: I can share my time with Mr. Shory.

Mr. Devinder Shory: Thank you.

Let me go back to the medical insurance health coverage. I have seen in my riding quite a few people who have insurance for up to $50,000, for example. It sometimes happens that the treatment is more costly than that. In that case, the sponsor goes into default. Once the sponsor is in default, it will affect his sponsorship as well. We need more clarification on this coverage issue and how we should handle it.

Of course, we all love our parents and grandparents to visit our families. Maybe you're going to give it a thought. In the meantime, I have another question on the same FC4.

The Chair: Why don't we just stick to that question? You've got 30 seconds.

Mr. Devinder Shory: That is why I wanted to put other questions.

Ms. Chantal Arsenault: In terms of the first question, we are willing to have a look at it and continue reflecting on that issue, but there's not much more that we can bring to the table right now.

Mr. Devinder Shory: Thank you.

Could I have another quick comment? You mentioned making both parents principal applicants. I have come across some cases in which both parents unfortunately passed away during this time. In that scenario, does CBA have any recommendations with regard to dependents in the meantime who are older than 22 years of age but are still dependent in the legal sense?

Ms. Chantal Arsenault: That is why we are having that suggestion of saying one parent or the other could be considered as the principal applicant. I think it would be difficult to put all of the children as principal applicants, but we could certainly mention that their applications should be continued as well.

The Chair: Thank you, Mr. Shory.

Mr. Trudeau, you have a minute.

Mr. Justin Trudeau: Thank you, Chair.

I'd like to hear your legal perspective as the Canadian Bar Association on something you say about the doctrine of dual intent in subsection 22(2), which makes it clear that an applicant's intention to become a permanent resident does not preclude them from becoming a bona fide temporary resident.

In our riding offices we see people being rejected all the time for visitor visas because as parents and grandparents they've also got a multi-year wait time to become permanent residents. Is there really no contradiction? Has CIC been wrong as often as that to imply that someone applying can't apply for temporary residence if they have permanent residency on the way?

Ms. Chantal Arsenault: That's what the changes in 2002 did in terms of saying that it is possible to have both intents, but it is not given to every applicant to benefit from the discretion that arises. They will still want to know that the person will leave Canada at one point if the person has to.

The way I understand the test is that if you have indicated an intent to be permanent in Canada, you also have to convince the officer that if your application were to be refused, you would leave Canada. That's when they look at things like ties to their home countries and ask why the person would leave, because if the person were to be refused, they don't think the person would leave. It's in those situations that you would see those refusals.

The Chair: Thank you.

Do you have a final comment?

Ms. Deanna Okun-Nachoff: The department has to look for certain indicators as to whether there is permanent or temporary intention. That's the formula being utilized right now. We're suggesting that maybe it doesn't fit this particular group of applicants. That's why we're asking for those criteria to be removed and for more objective criteria to be looked at to establish eligibility.

The Chair: Thank you, Mr. Trudeau.

Ms. Okun-Nachoff, Ms. Froc, and Ms. Arsenault, we thank the three of you for coming and making your presentation to us.

The witnesses are dismissed. Thank you very much.

[*Proceedings continue in camera*]

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