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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (1530)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I call the meeting to order. This is the Standing Committee on Citizenship and Immigration, meeting number 35, on Tuesday, May 1, 2012, pursuant to the order of reference of Monday, April 23, 2012, Bill C-31, An Act to amend the Immigration and Refugee Protection Act and other acts. This meeting is televised.

We have two witnesses with us today. The first witness is from Vancouver, British Columbia, and is a lawyer.

Andrew Wlodyka, you will be speaking for up to 10 minutes, sir, if you wish.

Mr. Andrew Wlodyka (Barrister and Solicitor, As an Individual): Thank you very much.

The Chair: Thank you.

The members of the other group are from Human Rights Watch. One is from Washington, Bill Frelick. He is the director of the refugee program. From Toronto we have Jennifer Egsgard.

Good afternoon.

Ms. Jennifer Egsgard (Member, Human Rights Watch Canada): Good afternoon.

The Chair: The two of you will be sharing up to 10 minutes.

Mr. Wlodyka, you may speak. We appreciate your coming.

Mr. Andrew Wlodyka: Thank you very much.

Members of the committee, it's a pleasure to speak with you this afternoon. I'm a lawyer. I used to be a member of the Immigration Appeal Board and assistant deputy chair of the Immigration and Refugee Board. I'm speaking to you from a perspective both as an advocate representing refugee claimants and other people who have had to go through the immigration system, as well as a decision-maker who has had to wrestle with the difficulty of making a decision that affects people's lives.

I also understand, because of this perspective, that it is a difficult challenge to deal with a refugee determination system that is expeditious and fair. I believe the government should be commended on its effort to reform the refugee determination system. Clearly, in my judgment, the status quo is not an option. It is unfortunate that these changes were not made after the Singh decision back in the mid-1980s. The taxpayer might have been saved a lot of money, and enormous backlogs might have been avoided. But then, in my judgment, it's a case of better late than never.

Another comment I have is that refugee determination must be looked at in the context of protection and not in terms of immigration. These two systems are very different. As much as possible we should respect those differences. For people who wish to immigrate to Canada, there is a process of selection. There is also an avenue of exercising humanitarian and compassionate grounds. Both can be made within Canada and outside of Canada. Refugee determination is a very different process. One should as much as possible keep these things separate.

I do not have a problem, then, with requiring people to choose a path to follow. The one-year bar until an application can be made on humanitarian and compassionate grounds is, in my judgment, not an unreasonable one.

I would also encourage the government as much as possible to make the process of refugee determination outside of Canada as transparent as the process inside Canada. Proposed section 99 of Bill C-31 certainly allows claims from both inside and outside of Canada.

Unfortunately, my bitter experience has shown that refugee claimants who have made claims outside of Canada certainly are not getting the same kind of fair treatment that they obtain inside Canada. A review of decisions is much more difficult and an enormous challenge. Those people or organizations who help refugee claimants abroad know all too well the challenge of challenging decisions made by visa officers outside of Canada. I would certainly encourage that these officers receive the same kind of training that board members, both public servants and GIC appointees, receive.

I have other comments in relation to the loss of permanent residency status.

I certainly don't have a problem with people losing their permanent resident status if their refugee claims are vacated due to fraud. The provisions that deal with that, in my judgment, are fair and reasonable.

The area in which I have a problem is that there is a provision dealing with loss of permanent resident status under section 19, where there is a cessation of refugee protection. An application is made, and then determination is made under various criteria laid out, including change of circumstances.

In those kinds of cases, I think it would be grossly unfair to remove permanent resident status from persons unless there's some kind of tie-in to a ground of inadmissibility, such as misrepresentation or criminality. In those cases, those permanent residents should have recourse to the immigration appeal division to deal with the case, both on legal grounds and on humanitarian and compassionate grounds, as set out in subsection 63(3) of the current legislation.

● (1535)

With respect to time limits for proceeding with refugee claims, we have a seemingly greater emphasis on expediting cases of claimants from designated countries of origin—manifestly unfounded claims and such. This is very problematic. I think all refugee claimants, whether they come from designated countries of origin or not, should have similar timeframes for initiating their claims. A 28-day time limit, in my judgment, is tough enough. To impose a much harsher timeframe, especially given the rather precarious state of legal assistance in this country.... It varies from province to province. In our province, in British Columbia, legal aid is not very handy to have; it's very difficult to obtain.

I would certainly encourage the government to think of some other process—rather than just giving money to provinces, creating a system whereby there could be some assistance at the initial stage. In my judgment, the more assistance you provide at the beginning, the more likely the whole process will be fair to the very end.

With respect to the power to designate a country or part of a country or class of nationals, I do not have a problem with the minister having this power, as long as the criteria are transparent. In my judgment, the process undertaken should be something akin to making regulations. This means that interested parties should be able to comment; it's not sufficient just to publish the designation in the *Canada Gazette*. The minister is accountable to Parliament and to the public. I don't have as much confidence in these “experts”; I'd rather put my trust in parliamentarians and ministers, who in the end are accountable. Therefore, with respect to this provision, I do not have a problem.

I know there's always a concern about criteria irrelevant to the determination, such as trade considerations, military considerations, alliances. None of those are set out in the proposed regulations, and in my judgment, decisions made based on such things would be subject to legal challenge. Frankly, that should be sufficient deterrence to prevent the minister from going down that road.

I also do not have a problem with having different refugee determination regimes for different classes of refugee claimants. After all, the bottom line is that even the ones from designated countries of origin would have access to the Federal Court, which they've had since 2002, with leave. It is only with respect to other refugee claimants that additional access to the refugee appeal determination system is provided, which the DCOs would not have. But in my judgment, the present system of judicial review by the Federal Court for those kinds of cases is more than adequate.

The regulatory provision for a stay proceeding has been removed, but there is still access to the Federal Court, provided that the tripartite test is met; therefore, a stay order can still be obtained. It would be another thing if there were to be no right of judicial review or no hearing at all for DCO-type cases, and that's certainly not the case here.

After all, we're trying to design a system to expedite removal of people who do not satisfy the criteria for refugee status. To leave it the way it is would simply perpetuate the problem, and we would never be able to have a system that works, unless we finance it at enormous expense, which clearly the public is not prepared to tolerate.

In terms of the bar to making applications for permanent residency for illegal arrivals, in my judgment a five-year bar is excessive; three years is more than sufficient. After all, we're talking about individuals who have made a meritorious refugee claim. To prevent them from applying for five years, in my judgment, is overkill.

If a person wants to apply for permanent residence, there are options other than making a refugee claim. First of all, they can make the refugee claim outside of Canada; then there would be no bar to reuniting the family members. They could apply outside or inside on humanitarian and compassionate grounds without going down the refugee stream. They can also choose the immigration selection system for making an approach to get immigration status.

● (1540)

Clearly, we need to have some kind of a system to deter people from using the route offered by people smugglers. It's always easy to say we can prosecute people smugglers—

The Chair: Mr. Wlodyka—

Mr. Andrew Wlodyka: —but up to now the track record of prosecutions has not been great.

The Chair: Sir, perhaps you could wind up, please.

Mr. Andrew Wlodyka: It's been quite dismal.

The Chair: Your time has expired.

Mr. Andrew Wlodyka: I have only a couple more comments.

The Chair: Is that a promise?

Mr. Andrew Wlodyka: One comment is about detentions.

I would ask the committee to look at section 82 of IRPA dealing with the Federal Court on security matters in terms of the detention regime there. That should be more than sufficient. I think a one-year detention is excessive.

Finally, a comment responding to RAD, the appeal provision. RAD should only be used to either confirm or not confirm decisions. We shouldn't have a case going back for another kick at the can by the RPD. That just delays the process.

The Chair: Thank you, sir.

Mr. Andrew Wlodyka: I apologize for being slightly over time.

Thank you very much for allowing me the opportunity.

The Chair: Thank you.

Ms. Egsgard, Mr. Frelick, is one of you going to speak or are you both going to speak? Do you want me to flip a coin?

Mr. Bill Frelick (Director, Refugee Program, Human Rights Watch): We'll both speak.

The Chair: Okay. We'll give you five minutes, Mr. Frelick.

Mr. Bill Frelick: Right. Okay.

My name is Bill Frelick. I'm the program director for refugees at Human Rights Watch. We are an international non-governmental organization, a completely private organization that takes no government funding. We don't represent clients in court. We are independent human rights monitors, not service providers.

My background is that I've been the director of our refugee program for the last six years. Prior to that, I was the director of Amnesty International's refugee program. Prior to that, I was the director of the U.S. Committee for Refugees and Immigrants, where I edited *World Refugee Survey* from 1986 to 2002.

I'm going to address the questions of children and the Australia model, and briefly touch on designated countries of origin. Jennifer Egsgard, a private attorney and a member of our Canada committee, will talk about the detention provisions in permanent residency.

Moving to the question of children, the Convention on the Rights of the Child defines children under the convention as “every human being below the age of eighteen years”. Bill C-31, with respect to the detention provisions, says that “designated foreign national” applies to people “16 years of age or older on the day of the arrival”.

There is no rationale given in the bill or in the commentary on the bill from the government about why 16- and 17-year-old children, defined as children in the Convention on the Rights of the Child, are included here.

The reason we're particularly concerned about this is that article 37 of the Convention on the Rights of the Child basically says that there should be no arbitrary detention of children, and that if children are to be detained, it should be “as a measure of last resort and for the shortest appropriate period of time”.

Our view is that in Bill C-31, the detention of children is really a first choice rather than a last resort. Instead of it being for the shortest period of time, it in fact is mandated to be for a year, with some few exceptions that in practical terms don't look as though they would occur.

We also believe that this detention is arbitrary, which is barred under article 37(d) of the Convention on the Rights of the Child, because of the lack of a right to challenge the detention before a court or other independent, impartial authority, notwithstanding the limited Federal Court review that's in Bill C-31.

I think the main thing to keep in mind when looking at the Convention on the Rights of the Child, and in fact looking at the human rights of children, is article 3 of that convention, which says, “In all actions concerning children...the best interests of the child shall be a primary consideration.”

I think you really need to ask yourself, when you look at the purposes of Bill C-31 with respect to children, whether this is being done in the best interests of the child. If you look at the literature on the impact of detention on children in particular.... We cite in our written testimony studies by the college of general practitioners of the mental health impact on children, which is quite severe.

Perhaps I can take this segue to talk about Australia. The parliamentary commission there, just in March of 2012, issued a massive study on the impact of detention policies there, and cited study after study of the negative impact on particularly children.

So the question arises whether Australia and their treatment of migrants should be a model for Canada. The answer is no. In fact, Australia is not even a model for Australia. The mandatory detention, which went into effect in 1999, by November of 2011 had pretty much been lifted, with bridging visas to bring people from the excised offshore detention facilities.

● (1545)

It was shown that the number of people who had been arriving irregularly by boat in 1999, at time of that legislation, was 1,000. Two years later, when it was in full force in 2001, there were more than 5,000 arrivals.

The Chair: Mr. Frelick, if you're going to give Ms. Egsgard some time, you'll have to conclude soon.

Mr. Bill Frelick: Okay, fine.

The Chair: There is a point of order, Mr. Frelick. Hold on. Sorry.

Mr. Justin Trudeau (Papineau, Lib.): I'm just not sure. Are these not two separate witnesses from different...or is it one subset of the same?

The Chair: Mr. Trudeau, incidentally, welcome back. I'm glad to see you.

Mr. Justin Trudeau: It's a pleasure to be here.

The Chair: They're both from Human Rights Watch. One is from Washington and the other is from Toronto, but they're both one organization.

Mr. Justin Trudeau: Human Rights Watch and Human Rights Watch Canada are separate organizations.

The Chair: Indeed, but we're giving them five minutes each roughly.

Mr. Bill Frelick: No.

The Chair: Well, we'll see how it goes.

Mr. Trudeau, my understanding is that we have two witnesses. One is Mr. Wlodyka, who is speaking as an individual, and the other is Human Rights Watch. We don't have three groups.

Okay? Other than that....

Sorry for that interlude, sir. You are still speaking.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): A point of order, please, Mr. Chair.

The Chair: Ms. Sims

Ms. Jinny Jogindera Sims: Mr. Chair, it's very clear that they're two different organizations. If they were one organization, they would have both been listed under Human Rights Watch, but there are two different names. When you look at it, there is Human Rights Watch and then Human Rights Watch Canada. So in light of that, I would beg the chair's indulgence to allow both of them to have their time to speak.

● (1550)

The Chair: They are your witnesses and you submitted them as one witness.

Ms. Jinny Jogindera Sims: Then I apologize, Mr. Chair, and retract my point of order.

The Chair: I still think you're wonderful.

Ms. Jinny Jogindera Sims: Thank you.

The Chair: Mr. Frelick, I'm sorry for that. We have these little interludes from time to time and I apologize.

You still have the floor.

Mr. Bill Frelick: I'm happy to clarify that we are one organization. With that, hopefully, I can get into the other parts of my prepared statement during questions and answers. Of course, you have our written testimony, but I will turn it over to Jennifer Egsgard.

The Chair: Thank you, sir.

Ms. Egsgard, you have the floor.

Ms. Jennifer Egsgard: Thank you, Mr. Chair.

I've been a member of Human Rights Watch Canada for 10 years. I'm currently a lawyer with Sills Egsgard LLP, but until January I spent four years with a specialized legal aid office doing refugee law work. Part of my work there involved representing clients before hundreds of detention reviews and then challenging some of those to the Federal Court. So in my comments on Human Rights Watch's position I'll also be drawing on my own detention review experience.

Human Rights Watch is concerned that year-long mandatory detention and delay in obtaining permanent residency for designated persons will contravene international obligations under article 31.2 of the Convention relating to the Status of Refugees. This article prohibits imposing penalties on refugees on account of their illegal entry or presence. The rationale for this provision, of course, is that refugees fleeing for their lives often do not have the luxury of using legal channels to escape.

Human Rights Watch is also concerned that the one-year mandatory detention provision contravenes the International Covenant on Civil and Political Rights. It provides in article 9 that:

> Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Obviously that is not possible with the one-year mandatory detention.

It's my position that the year-long mandatory detention is disproportionate to the government's stated objective of addressing concerns about its admissibility and identity. As we've heard from other witnesses, Canada's Immigration and Refugee Protection Act already provides a system for detaining foreign nationals on these grounds in a manner that is consistent with international norms. Current law allows the government to detain foreign nationals if there's a concern about their identity, if there's a concern that they're a flight risk, and if there's a concern that they are a danger to the public.

If someone is detained within 48 hours under the current system, they have the right to a detention review. If not released, another review happens in seven days, and if not released it happens every 30 days. I have quite a bit of experience with these reviews, and as long as the government can satisfy the decision-maker that they're taking diligent steps to ascertain identity, admissibility, or some other outstanding issue, detention will be ordered continued, and considerable deference is given to the minister's counsel in those hearings.

In my experience at these detention review hearings, a hearings officer represents the minister. I have often seen that before the hearing the hearings officer receives an e-mail update from the minister's employee at Canada Border Services Agency who's been working on the case in the background. The hearings officer then uses that information to provide an update to the board member as to what steps are being taken. In my experience, as long as this update contains substantive developments, the board member is more than likely to order continued detention.

In the case of mass arrivals, from my experience, as long as the CBSA is acting diligently and can provide this monthly update to their hearings officer in advance of the hearing, a board member is likely to be satisfied that detention is justified and it will be ordered continued. It's my understanding that this was borne out in the *Sun Sea* cases, where numerous individuals were detained for multiple months. Indeed, you heard evidence yesterday that six individuals remain detained from that boat. You also heard that of those released, none have gone underground. The CBSA testified that they know where everyone is.

My experience in long-term detention cases also tells me that oversight of them is necessary. Certain cases can fall through the cracks, and month after month there might be no presentation of evidence about minister's steps that have been taken to address outstanding concerns. In those cases, if the individual has counsel to draw the board members' attention to this, board members increasingly will begin to question the CBSA about, “What steps are you taking to find out this person's identity or admissibility, or is there another issue that may be outstanding?”

Without this oversight and advocacy from counsel, people can and do languish for months and even years without release. I have serious concerns that this might happen in the context of a year-long mandatory detention; namely, no one would keep track of what steps were being taken to assess and determine admissibility or identity. If the detention review that happens after a year is not successful, they have to wait another six months, and so forth.

● (1555)

The Chair: Ms. Egsgard, could you wind up, please?

Ms. Jennifer Egsgard: I will. Thank you.

Detention is very expensive. Surely more resources could go to investigating identity and admissibility in the case of mass arrivals and avoid the need for mandatory detention.

I'd also be happy to answer questions on Human Rights Watch's concerns about how the five-year bar on permanent resident status applications also violates international law.

Thank you very much.

The Chair: Thank you very much.

Mr. Opitz has some questions.

Mr. Ted Opitz (Etobicoke Centre, CPC): Thank you, Mr. Chair.

I'm going to be directing my questions to Mr. Wlodyka.

Sir, I'm going to quote you first. You made a statement on CKNW-AM Vancouver radio. I'm going to read a quote because it's going to be relevant to my line of questioning.

It says:

> I frankly don't find anything wrong with that in the sense that the Minister's accountable to the public. If he makes a bad job of choosing which countries there's always the ballot box to deal with it as opposed to sort of faceless experts deciding these kinds of questions who are possibly not really accountable to anyone. So I don't really have a problem with the Minister. There is political accountability in the end.

Is that a fair statement?

Mr. Andrew Wlodyka: Yes. I stand by that statement.

Mr. Ted Opitz: Okay, great. I wanted to make sure that was accurate, sir.

Is it fair to say then that designating safe countries of origin is a fair approach, in your opinion?

Mr. Andrew Wlodyka: Yes. In my judgment it is, as long as the minister follows transparent criteria. There are countries—Europe, the United States, Australia, New Zealand—where they have similar systems to ours. They have similar refugee determination systems to ours. Claimants from those countries should not necessarily be treated the way a claimant is from Somalia, Liberia, or some other country. We're trying to maximize use of very scarce resources, and those resources should be focused on where the need is the greatest. We don't have endless supplies of money.

I have confidence that if the minister makes a determination on transparent criteria that's set out in the legislation, you'll have a fair process. I would like to have input from the public. That's why there should be a regulatory process whereby there are prepublication comments in the *Gazette* and not just a simple order.

If the minister is in fact following the proper process laid out by Parliament, I think that would be sufficient to protect the public interests.

Mr. Ted Opitz: Great.

Overall, then, what effect do you think this is going to have on hearing wait times and the backlogs?

Mr. Andrew Wlodyka: It should improve the process because you're eliminating the avenue in terms of recourse to the Federal Court, in the sense that you're limiting them to the Federal Court. They don't have access to RAD. You've removed the regulatory stay provisions.

People who lose their refugee claims would have to satisfy the Federal Court on the tripartite test of an arguable case that the balance of convenience and irreparable harm issues favour the claimant, otherwise they'll be removed from Canada. Expeditious removal will serve as a deterrent. If it's a deterrent, there will be fewer claims from countries that normally do not produce refugees, and therefore more resources will be devoted to those countries where refugees are produced.

If the minister is consistent with his approach, there may be problematic areas. Countries such as Mexico, and the Romas, from countries like the Czech Republic, Hungary, and other parts of eastern Europe will be difficult cases because there are successful claims regarding both of those.

It will be interesting to see how the minister determines it. That's why I'm in favour of a process that will allow public input, to make sure the determination is consistent with the legislation laid out by Parliament and that it is fair to all concerned. But it should it have a favourable impact.

● (1600)

Mr. Ted Opitz: Right, sir.

Given what you just said, would you then agree that the effect on genuine refugees would be generally positive and allow them to pass through the system more fairly and quickly?

Mr. Andrew Wlodyka: Yes, because more resources would be devoted to that system. They would have the benefit of RAD as well; therefore, the Immigration and Refugee Board would be able to catch those mistakes because they have the power to substitute decision-making. Where there are mistakes made at the first level, they will be corrected at the second level, and we'll have a way of spending most of our resources—our scarce resources—on where they're needed the most.

In my judgment, that would be in the public interest.

Mr. Ted Opitz: Would you think the designated safe countries of origin provisions we find in Bill C-31 go far enough?

Mr. Andrew Wlodyka: In my judgment, they are fair in terms of the criteria. Where I have a problem is that the minister is proposing to simply issue an order that will be published in the *Gazette*. In my judgment, that's not sufficient.

The approach to designated countries of origin should be akin to that for regulations. Therefore, there should be a prepublished list of those countries. There should be a justification as you have for regulations. There would be opportunity for the public to comment, and therefore there would be safeguards in terms of any regulations. This is a very important step. You're taking rights away from people. The process of doing so should be as transparent as possible, in the sense that for those who come from countries where refugee claims are not prevalent, this determination is made in a transparent manner by people who are accountable to Parliament and to the public.

Mr. Ted Opitz: All right, sir. Thank you.

In terms of the current system, can you give us perhaps some practical examples of how you think the current system might be flawed?

Mr. Andrew Wlodyka: First of all, it's an access system for everyone. Everyone accesses it, whether they have manifestly founded claims or manifestly unfounded claims. You have a system that goes through a refugee determination process at the first instance, which would occur here. The only difference is that the first instance decision-making under the new legislation will be done by public servants as opposed to GIC appointees.

There is no RAD in the current system. There's only judicial review by the Federal Court. The Federal Court legislation sets out strict criteria, but it can't be a substitute for a *de novo* review.

The Chair: Ms. Sims has some questions.

Ms. Jinny Jogindera Sims: Thank you very much.

My questions are going to be more on the designated country of origin, so perhaps Bill or Jennifer would be willing to address those.

Whenever we start talking about designated countries of origin, it seems as though some people have ideas about countries they consider to be safe. We've often heard that as long as you have a democracy, it is a safe country, but we know that is not true.

Can you detail some of the issues that have come up regarding countries that could be on the safe list, such as Mexico, and what kinds of challenges face certain communities, such as women, ethnic or religious minorities, and those who identify as LGBT?

Mr. Bill Frelick: Yes, I'd like to respond to that question. It's a very good one.

In fact, my work as the director of our refugee program is global work, but much of my own research has been focused on Europe. I've done field work in Italy, Malta, Greece, Turkey, Slovakia, Hungary, Ukraine, and I'm probably missing a few off the top of my head.

What I've seen, particularly with the focus of my work, which is on asylum seekers, migrants, and refugees, is a high degree of xenophobia and street violence, in many cases directed against darker-skinned people, migrants in particular.

I've also been in the detention centres in most of those countries I just mentioned—including Greece, in particular, I'd like to point out, which is an EU country—and the conditions of detention there are absolutely inhuman and degrading. I myself documented cases where people were brutally pushed back across the border into Turkey. I also have been in the detention centres in Turkey, which are horrific.

We just published a report a couple of months ago on racist and xenophobic violence in Italy. Just last week we published a report on the discrimination against Roma, Jews, and other national minorities in Bosnia. These are reports that are essentially fresh off the press about, in the case of Italy, violence directed against dark-skinned people primarily. This is something we're seeing in Hungary and in many other places as well.

● (1605)

Ms. Jinny Jogindera Sims: We've heard a lot from some of the other witnesses before us that one of the elements in the bill is that, first, you're going to be kept in detention for up to a year, and, second, for five years you're not going to have any kind of status or access to travel documents. We've heard that's a contravention of international law.

Could you explain to us what that particular aspect contravenes?

Ms. Jennifer Egsgard: Both of those provisions will take effect once a refugee is designated as a designated person. It's our position that it punishes refugees based on their irregular arrival, because the designation occurs when there is an irregular arrival. That, in and of itself, is prohibited under international law.

As to the five-year ban on adjustment to permanent resident status, this also contravenes article 34 of the Refugee Convention, which states that:

> The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

So a five-year bar on application for permanent residence, which would then lead to seven to ten years' delay in being reunited with family members, would contravene that provision. It would have a negative impact on the right of separated refugee families to reunite, delaying reunification for seven to ten years. The right to family unity is considered by UNHCR to be a fundamental aspect of effective protection of refugee children. We know that children, especially unaccompanied children, are some of the most vulnerable migrants imaginable. The delay in family reunification could damage both the welfare of the children and their families, as well as the integration prospects for the migrants concerned.

The delay in family reunification would also violate the UN Convention on the Rights of the Child. It states in article 10 that:

> ...applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

The delay in obtaining permanent residence, and then the further delay in ability to sponsor family members, would contravene the UN Convention on the Rights of the Child as well.

Ms. Jinny Jogindera Sims: Other witnesses before this committee, such as Sean Rehaag, have explained the extreme inconsistencies in decisions of the IRB. Some judges refuse to believe that any refugee claim is valid.

If a bona fide refugee is not given a fair hearing initially, what could happen if they are sent home without the right to an appeal?

● (1610)

Mr. Bill Frelick: The case that comes to mind immediately is one we just saw in Sri Lanka, where the U.K. returned a group of rejected asylum seekers, essentially saying, hey, the war is over and it's safe to go back, and they were sent back to Sri Lanka. Our researchers in Sri Lanka were able to document that they had been detained and burned with cigarettes. This just happened in the last several months. Actually, we did two press releases, one just yesterday, because Minister Bowen of Australia is in Sri Lanka right now.

The consequences of negative decisions are life and death. These are serious decisions to be made. That's why we have strong reservations about the designated country of origin, which will not give people who are so designated the right of appeal and will not suspend their removal during that time.

The Chair: Thank you, Mr. Frelick.

Mr. Trudeau.

Mr. Justin Trudeau: Mr. Wlodyka, the government side has asked you directly if you are supportive of the idea of a designated country of origin, and you have said that it is a smart allocation of resources on the condition that it be appropriately transparent and accountable in light of the choices and decisions being made.

As it is written in Bill C-31, are those safeguards transparent and adequate enough for you to be able to support this provision?

Mr. Andrew Wlodyka: In my judgment, the criteria are sufficient. The process of designating the country, or part of it, or a group of nationals is not adequate. As I indicated in my previous remarks, a process akin to regulatory changes allowing for public comment as a pre-publication in the *Gazette* would be a stronger safeguard to make sure that the designation is as transparent as possible, allowing outside feedback.

Simply issuing an order that is published in the *Gazette*, in my judgment, is not sufficient.

Mr. Justin Trudeau: Thank you very much for clarifying that particular caveat on your support for that provision.

I have a second question. When we have boats filled with migrants arriving, such as the *Sun Sea* and the *Ocean Lady*, is it fair to qualify those asylum seekers as queue jumpers?

Mr. Andrew Wlodyka: Are you directing your remarks to me?

Mr. Justin Trudeau: Yes, sorry, I'm following up with you, sir.

Mr. Andrew Wlodyka: All right. Sometimes I wonder.

No, I don't think it would be. If they make out a successful refugee claim, they're certainly not queue jumpers. However, they have chosen to utilize the services of people smugglers. There has to be some kind of deterrence mechanism to prevent them from doing that. There are two ways of doing it. One is making it easier to make the refugee claims from outside of Canada. The second is making sure, if they do use that route, that the detention provisions are as humane as possible. I noticed that even for a security-related risk in the legislation that exists now, you have a better regime to review detention of illegal migrants.

Mr. Justin Trudeau: Thank you. I'm sorry to cut you off. My time is extremely limited, and I got the answer I was looking for in that no, they're not queue jumpers.

So when we have politicians talk about refugee seekers as queue jumpers, or asylum seekers as queue jumpers, it doesn't actually apply, because we have a process for refugees, not a queue, as we have for the immigration system.

Commenting on the deterrent—and perhaps this can go to any of the three experts before us—detention for a year, or holding back citizenship rights for five years or even for three years, as you suggested, Mr. Wlodyka, is that enough to deter someone who has, to use your words, sir, a meritorious claim? If people are genuine refugees, fleeing for their lives from torture, from persecution, from which their state cannot protect them, is the idea that they might be in jail for a year or have certain limitations on their citizenship a significant deterrent? For people who are genuinely fleeing for their lives, would that actually be effective in this situation?

● (1615)

Mr. Andrew Wlodyka: I will respond to that first, and I'll leave my colleagues to respond as well.

If the case is meritorious, clearly you should have a system whereby their determination is made as quickly as possible by the appropriate tribunal. If you cloud the system up with people who do not have meritorious claims, the resources will not be able to get to these people quickly enough. So we can take them out of the system. In that sense, the designated countries of origin and all of this you have to look at globally, in the sense that I would err on the side of making sure that the refugee determination system's resources are put to those people who need it.

In this particular case, with illegal arrivals, they're probably going to come on the boat anyway, no matter what, but at least if their case is meritorious.... In my judgment, not all illegal arrivals are meritorious. Many in fact do not have legitimate refugee claims, but for those who do and are willing to take the risk, as long as our system selects them quickly, that is the best way to go.

The Chair: Thank you very much.

Mr. Menegakis has some questions.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chair.

I want to thank our witnesses for appearing before us today.

Mr. Wlodyka, I'd like to continue the line of questioning with you, if I may, sir. There are many things in Bill C-31 that address the real issue of trying to facilitate the process time of legitimate refugees who are seeking asylum coming to Canada from countries in which, of course, they're facing persecution of some kind. The new measures in the bill finalize a refugee claim from an average of 1,038 days to 45 days for claimants from designated countries of origin, and 216 days for all other claimants. Certainly, someone who is fleeing their country for fear of their life would greatly benefit from reducing the amount of time they'd be in the system in Canada. I think that's one of the key goals of the bill.

What impact do you think bogus refugees have on genuine refugees who have to wait longer?

Mr. Andrew Wlodyka: In my judgment, that is the sort of fundamental aspect of what I've been presenting. The idea is to devote as many resources as possible so we can get the legitimate refugee claimants out of the system as fast as possible, because they don't deserve to be stuck in there. We need a way to filter out those who do not have legitimate claims, who are basically using our refugee determination system as a way to immigrate. We need to have a system that does that, but in a transparent and fair fashion.

Mr. Costas Menegakis: A question came up earlier from the other side, I believe, about when people, whether they're queue jumpers or not, use illegal means of coming into the country. We know that human smuggling is a very lucrative business. The idea of treating everybody who comes into the country by illegal means in a different fashion, if you will, raises some very serious concerns. For example, I heard the member from Papineau mention the *Sun Sea* and *Ocean Lady*. In those two particular cases, a total of 41 people were denied admission to the country; 23 were found to be security risks; 18 were found to have perpetrated war crimes in their country of origin. I don't believe Canadians want 41 people living in their neighbourhoods, being around their children, who are in effect criminals in the country from which they came.

There needs to be due process, a time to be able to evaluate their eligibility to come to the country, and certainly the safety of Canadians is paramount.

I do have one more question for you, Mr. Wlodyka. Do you think it makes sense that 25% of refugee claims in Canada come from the European Union, more than Africa and Asia? What does that say about our system when they have a choice to go to 26 other countries —there are 27 in the EU—yet they come to Canada?

● (1620)

Mr. Andrew Wlodyka: My response to you is that clearly the bill identifies this as a serious problem. You have people who come to Canada who use the refugee system, and it's tied up in knots for years. At the end of the day, even if they are turned down, they have access to humanitarian rights application, humanitarian and compassionate application, and it takes years of very scarce resources to remove them. Those people who are desperately in need, even those who sometimes come on boats like the ones you mentioned...the ones who do have legitimate claims are languishing in the system because it's not able to deal with legitimate claims in an expeditious fashion.

Mr. Costas Menegakis: Thank you.

How's my time, Mr. Chair?

The Chair: You have a couple of minutes.

Mr. Costas Menegakis: Oh, good.

I would like to go back to the queue jumper issue. There are people who come to Canada, tie up the system, clog it up, and eventually, a very significant number of them, a large percentage, end up abandoning and withdrawing their application. Mr. Wlodyka, in your opinion, would someone who's a genuine refugee and truly fear returning to their home country be willing to withdraw or abandon their application?

Mr. Andrew Wlodyka: In my judgment, legitimate refugee claimants who have legitimate claims would not abandon or withdraw their claims. Why would they if they are seeking protection? Clearly, it's in the criteria that show that the claim is not legitimate in the first place. A system that deters these kinds of claims, in my judgment, is necessary. However, the selection of the criteria has to be transparent, the designation of which countries or parts of countries or groups has to be transparent, so that the public will genuinely support that system and apply the necessary resources to then expedite removal of these people, which will then deter others from taking the same route.

Mr. Costas Menegakis: This is the last question, I guess, for you, sir.

What are you hearing, if anything, about the government's recent announcement to make sure that refugees don't receive health and dental benefits that are more generous than those Canadian taxpayers receive?

Mr. Andrew Wlodyka: In my judgment, people are people. They should be receiving the same treatment. Canada is a very generous country, and I don't think we should be going down that road, to vilify refugee claimants or people. It would be a mistake to try to do that. Whether we're Canadians or permanent residents, or whether we're legitimate claimants fearing persecution, under the law we're all supposed to be treated equally, and that is my position on the matter.

The Chair: Thank you very much.

Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé (Saint-Lambert, NDP): Thank you, Mr. Chair.

Welcome to the witnesses.

Mr. Frelick, you talked about the devastating effects of detention on children and pointed out that the best interests of children are not being taken into consideration. We also understand that Australia's mandatory detention program, instead of preventing mass arrivals, mainly harmed the refugees.

In your view, what other provisions should we adopt or include?

[*English*]

Mr. Bill Frelick: First, there's certainly an obligation under the Convention on the Rights of the Child. The notion that the cut-off date would be 16 years rather than 18 just came out of the blue here.

When I first looked at the bill, I shook my head as to what's going on. What is Canada doing here? There are certainly implications there that go beyond Canada itself.

The literature is vast on the negative impact of detention on children, particularly unaccompanied children. Of course, the younger you are, the worse it gets. I think we should also hasten to add that although detention is not mandatory for children 15 years and younger, under this bill it's still allowed, so children may still be detained as a discretionary matter.

The alternative is following what the Convention on the Rights of the Child says, which is that you follow the best interests of the child. You make a best-interest determination: What is in the best interest of this child? It's not using the child as a means towards a deterrent against some smuggler somewhere, but protecting the child —protecting the child against smugglers, for that matter. It's using appropriate means—foster care, whatever it might be—that follow a best-interest determination by child welfare specialists who can make that determination based on what is best for that child.

● (1625)

[*Translation*]

Mrs. Sadia Groguhé: Thank you.

The detention system for designated foreign nationals under Bill C-31 has sparked a great deal of interest on the part of our witnesses. Some of them feel that it is a violation of the rights protected by the Canadian Charter of Rights and Freedoms and by international obligations. What do you think, Mr. Frelick?

[*English*]

Mr. Bill Frelick: Maybe with respect to the Canadian charter I might refer to Jennifer, who is Canadian. Being a U.S. citizen, I feel like I'd be a bit of a carpetbagger to make that judgment.

Jennifer, would you like to comment on the Canadian charter?

[*Translation*]

Mrs. Sadia Groguhé: What do you think, Ms. Egsgard?

[*English*]

Ms. Jennifer Egsgard: Yes. Obviously, I would agree that it would violate the charter as well, particularly sections 7 and 12. I think the Charkaoui case, which the Supreme Court decided several years ago, indicated that indefinite detention without review is unconstitutional and does violate the charter, and that is precisely what is proposed by Bill C-31.

[*Translation*]

Mrs. Sadia Groguhé: Do you feel that the provisions dealing with irregular arrivals and designated foreign nationals are a strategic response to irregular immigration?

[*English*]

Mr. Bill Frelick: Again, we're speaking as a human rights organization, but I think we do need to question whether using detention as a deterrent is appropriate in the first place. I think you need to look at it. Is the person identified? Does the person represent a danger to the community, to the public? Is the person likely to abscond? Will they cooperate if they have a refugee claim or for their removal? If those conditions are met, then there's really no appropriate reason to detain the person.

To just say that mandatorily we're going to detain people for a year is arbitrary, and it is, frankly, punitive. That's the problem we have here.

It's not particularly strategic. In fact, when you look at the Australian model, where they did try mandatory detention, they basically found that—and I'm quoting the head of Australia's department of immigration—"Detaining people for years has not deterred anyone from coming". I have supporting quotes from the immigration minister as well.

The Chair: Thank you, Mr. Frelick, sir.

Mr. Weston, you have time for one brief question.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): I thought I had five minutes.

The Chair: Well, this meeting ends at 4:30.

Mr. John Weston: Okay.

Andrew, not just because you're from beautiful British Columbia, but because so many of the bar respect you so highly for what you do, I had five questions, but we're going to make it one.

The one-year warrantless detention is one thing that has come up often. We've heard from other lawyers who have appeared here, as well as Ms. Egsgard today, that it would violate the principle in the Charkaoui case.

You, on the other hand, thought that one-year detention was something reasonable. Can you give us some sense of why you think it is reasonable and why it may not violate the Charkaoui principle?

Mr. Andrew Wlodyka: In my judgment, I think it's important to differentiate the time of detention and the process of review. In my judgment, as I said in my initial remarks, if you look at the security provisions in section 82, even for people who are alleged to be terrorists there is a detention review at least six months at a time. This is even more draconian than that.

I would think that there has to be a process of review. I do have concerns that mandatory detention, even for a year, without that kind of process would be unconstitutional and would be struck down. At the very least, there should be a process of review at least akin to the security provisions in section 82, in order to withstand scrutiny.

Also, clearly, expeditious determination of refugee status for legitimate claims would take those people out of detention. That is ultimately the best remedy: devote resources to legitimate claims and get them out of the system as quickly as possible.

● (1630)

The Chair: Thank you, Mr. Wlodyka, Mr. Frelick, and Ms. Egsgard. Your testimony has been well received, and we thank you for it.

We will suspend for a few moments.

● _____ (Pause) _____ ●

The Chair: I'll reconvene the meeting with our second panel. We have two witnesses.

From the Women's College Hospital, we have Dr. Meb Rashid, a medical doctor at Crossroads Clinic. We also have with us David Matas, a lawyer.

You each have up to 10 minutes to speak.

Dr. Rashid, welcome to the committee. You may speak now.

Dr. Meb Rashid (Medical Doctor, Crossroads Clinic, Women's College Hospital): Thank you very much.

I want to first thank you for your invitation and for the work being done to determine the impact of Bill C-31 on the arrival of refugees in Canada.

Just as a bit of background, I'm a family physician who has worked extensively with newly arrived refugees, going back about 10 years. I did my undergraduate medical degree at the University of Toronto, completed my residency program at McGill University, and did some training at Johns Hopkins University in Baltimore. I am part of the steering committee of the North American Refugee Health Conference and was a member of the group that recently published evidence-based guidelines for the assessment of newly arrived immigrants and refugees.

At present, I'm the medical director of the Crossroads Clinic at Women's College Hospital in Toronto. It's a new clinic that serves newly arrived refugees in Toronto. Women's College Hospital is an academic site, and I'm affiliated with the Department of Family and Community Medicine at the University of Toronto.

Over the last 10 years, I would say that I've seen thousands of refugee patients who've arrived in Toronto. I was quite involved with the migration of the Karen refugees from Thailand, for example. More recently, I've seen numerous Hungarian Roma patients in my practice. As such, I've seen both resettled refugees and refugee claimants, and I feel well positioned to speak to the health issues that challenge these populations. I also feel comfortable speaking to the impact of elements of Bill C-31 and the resulting impact on the health of newly arrived refugees.

I want to start by acknowledging that from where I sit, Canadian refugee policy is something that should make Canadians very proud. Despite the negative comments that have been recently widespread in the media, many of us believe that Canada has been a leader in providing refuge to some of the world's most vulnerable people. Canada has truly settled people based on a need for resettlement, not just on the ability to integrate. And I think we should be proud of this legacy. We have done it in a manner that respects our international obligations, and we have provided people with a reasonable opportunity to articulate their stories.

Canada has historically been an ally to persecuted people internationally, and I believe this is a reciprocal relationship. I truly believe that many waves of refugees have thrived post-migration and have contributed in meaningful ways to Canadian society. I think of the success of the Vietnamese refugees or the South Asian refugees from Uganda as relatively recent examples.

Bill C-31 is a huge bill that will likely significantly change the refugee system in Canada for many people. I want to preface my comments by emphasizing that we know that many of those who will be affected by this bill will eventually become Canadian citizens. As such, maintaining the health of refugee claimants would appear to be not only a moral issue but an issue that in many cases will impact the health care costs of those who will eventually become new Canadians. Changes in policy that exacerbate existing health care issues will diminish the potential of successful claimants to seamlessly integrate into Canadian society.

Although the health issues vary significantly in different waves of refugees, one consistent reality is that the migration trajectory of refugees puts them at higher risk of having mental health issues, such as post-traumatic stress disorder, depression, and anxiety. I would suggest that this should be kept in mind as we examine particular aspects of the bill that will affect refugees.

A few years ago, I met a gentleman who had arrived from a country in Africa. He was a striking figure, well over six feet tall. He was immensely articulate. He was well educated. He'd done his Ph. D. in a neighbouring country before returning to his homeland, where he became involved in politics as a member of an opposition party.

The first day I met him, this striking figure sat in my chair and he cried for an hour. His story was such that a few days before he arrived in Canada, he had been taken into custody by officials there. It was the third time he had actually been incarcerated. This time, he was beaten into unconsciousness. He woke up in the hospital, and luckily, he had a sympathetic nurse who told him that his assailants were waiting for him outside and that as soon as he woke up, they were going to take him back into custody and continue their questioning. She smiled, and she said, “You know, there's a back door over there, and I'm leaving on break.” So in his hospital clothes, he took off out the back door and made a run for the border. Luckily, when he got to the border, he had a family member there with some means who actually arranged with an agent to get him on a plane to leave the country. He is certain that like many of his colleagues, he would have died in custody if he hadn't been able to get out of the country.

I cite this case to shed some light on the issue of using human smugglers to flee persecution. We all recognize the tremendous abuse often committed by such criminals. The stories of people who have been scammed by such agents have been well documented. My patient had no choice. He was lucky that in his case he was successful in getting to Canada and in being eventually recognized as a convention refugee.

Stories like this are unfortunately not uncommon. I would think that all of us, if our lives or the lives of our families were in immediate danger, would do what we had to do to flee such persecution. This sometimes leaves people with no other choice but to use agents. Of course, this is not the ideal, and many people are victimized by their desperation.

● (1635)

Nevertheless, Bill C-31 seems to strike another blow to those who have had to risk their lives by using such smugglers. By recognizing the use of smugglers, the bill allows for the detention of individuals for up to a year. It prohibits people from sponsoring family members for five years, effectively keeping people from their partners and children for even longer.

Bill C-31 correctly acknowledges the tremendous risk posed by smugglers and agents. Unfortunately, it doesn't recognize that for many, smugglers are the only channels available to flee persecution. Bill C-31 increases sentencing for smugglers, but there are tremendous consequences for the refugees themselves. We heard overtures of this bill being a deterrent for those considering the use of smugglers. My experience suggests a deterrence would not apply to those who are truly fleeing impending threats. When you feel imminent danger, you do whatever it takes to leave. We would all do the same thing.

Bill C-31 allows for the detention of those suspected to have used smugglers. The impact of placing vulnerable people in detention is well documented. We know this triggers mental health issues, and the severity of these issues is proportional to the duration of detention. This impact has been documented to be particularly profound on children. Bill C-31 will force families to decide whether they should keep their children in detention with them or place them in foster care in a country and a system with which they're usually completely unfamiliar.

I have another patient in my practice. She's in my practice currently. She's from a Spanish-speaking country, one that could very easily be placed on the designated countries list. She was a criminal prosecutor for the state. After successfully prosecuting gang members, she was taken hostage, beaten, and sexually abused. She remained in the country until her neighbours informed her that people had come looking for her again one day when she wasn't home. She fled and came to Canada with the hope of having her children join her in the near future.

I'm confident she'll be seen as an individual who requires protection and will be determined to be a convention refugee. Her greatest issue now, though, is not her safety. She's separated from her two sons who are in the care of their father. She has reason to believe that they may also be under threat, and in our conversation she's so worried about them that she has spoken about returning home despite the very real threat of her being killed. Their father takes good care of them, she says, but in her words, all children need their mothers.

There's nothing unique about the torment of a parent who is separated from her children. Unfortunately, in my practice, this is too common.

Provisions in Bill C-31 will prevent some refugees from sponsoring family members for five years. These would be successful refugee claimants who have already been recognized as convention refugees requiring protection. I can't fathom the motivation for such a policy. Most of my patients who fled without family members did so because of dire circumstances. Many struggle with social isolation after arrival. Keeping permanent residents from seeing family members for over five years seems unnecessarily cruel. It undoubtedly imposes tremendous emotional stresses on people who have already suffered tremendously. Separating families of soon-to-be Canadian citizens does not seem to serve anyone well.

Finally, I want to comment on the designated country list. I have witnessed many people over the years who have had successful refugee claims despite coming from countries where some would think refugees should not originate. I think of a whistleblower in Mexico who was threatened and nearly killed despite moving to different cities on a number of occasions. I've been impressed with how the IRB takes the precaution to judge each claim on its own merit. It seems unnecessary to fast-track people from countries that don't, upon first inspection, appear to be refugee-creating countries.

My experience with the Hungarian Roma has been very instructive for me. I had not seen many refugees from Europe until encountering this particular migration. At this point I would say I've seen over a hundred Roma refugees and I've heard numerous accounts of similar stories, unprovoked violence by organized groups of neo-Nazis. The present political situation in Hungary is certainly not a topic on which I have any expertise. Nevertheless, I have sat and listened to the stories of many of my Roma patients. Their fear seems very real. Their stories, although different, share many similar themes that speak to systematic violence.

Creating two groups of refugee claimants underlies the message that some groups of populations face persecution even if the larger population does not. I have met many patients who have been determined to be convention refugees from countries that have not produced large numbers of refugees. Making the distinction based on country of origin seems to diminish the credibility of minorities who may be true victims of persecution.

As a physician who has had the privilege of working with refugee patients for many years, I've always stated that I've worked with the world's heroes. I'm amazed at the true resiliency of the human spirit. Daily I have the opportunity to serve those who have endured unimaginable trauma. Consistently they arrive with tremendous optimism and a desire to contribute to Canadian society. I'm deeply concerned that Bill C-31 will unnecessarily retraumatize a significant number of these refugees. I applaud efforts to expedite the refugee process. Nevertheless, this cannot be at the expense of the mental health of such a vulnerable population.

● (1640)

I will finish with a quote from a medical article from Steel et al in the *Australian and New Zealand Journal of Public Health*. They conclude their analysis of the mental health impact of detention by stating:

> In their attempt to manage the international asylum crisis, it is important that Western countries do not inadvertently implement policies that cause further harm.

I am afraid there are too many elements of Bill C-31 that will cause harm to such vulnerable populations.

Thank you.

● (1645)

The Chair: Thank you very much, Dr. Rashid.

Mr. Matas, go ahead.

Mr. David Matas (Lawyer, As an Individual): Thank you for inviting me.

I would like to address only one of the many changes proposed by Bill C-31—the provision that deals with designated foreign nationals, which you've heard about before.

I am a former chair of the immigration law section of the Canadian Bar Association, a former president of the Canadian Council for Refugees, and a former legal network coordinator of Amnesty International, and I endorse the positions of these organizations on the bill.

What I'd like to do is not just reiterate their concerns but approach the issue from a different perspective: the inconsistency with other government policies of the components of the bill relating to designated foreign nationals.

Because there is a majority government now in Parliament, Bill C-31 will pass in its present form unless at least some government members want it changed. So the admittedly daunting task I have tried to set myself here this afternoon is to attempt to achieve just that, to attempt to persuade government members that they should want to change Bill C-31, because the provisions in the bill relating to designated foreign nationals contradict and undermine government policies.

The designated foreign national provisions of Bill C-31, like the rest of the bill, are general in nature but their genesis was quite particular. The proposals began with Bill C-49, introduced in October 2010 into Parliament in response to the arrival of Tamil boat people aboard the MV *Ocean Lady* and the MV *Sun Sea*. The Minister of Citizenship, Immigration and Multiculturalism justified the proposed legislation by reference to these arrivals. The proposed legislation is retroactive to before these arrivals, pointing to the relevance of these arrivals.

In May 2009, Sri Lanka ended a long civil war where there were 80,000 deaths. At its end, there was a frenzy of killing and mass detention of Tamil civilians. Tamils in Sri Lanka continue to be victimized by the victors in the war, and the systemic discrimination, harassment, and persecution of minority Tamils by elements of the majority continue with a vengeance.

The first policy I'd like to identify as clashing with Bill C-31 is the government policy on human rights in Sri Lanka, which I endorse. Prior to the October 2011 Commonwealth heads of government meeting in Perth, Canadian Prime Minister Stephen Harper said there should be a boycott of the next Commonwealth summit in Sri Lanka unless there is progress on human rights in Sri Lanka.

The Government of Sri Lanka appointed a commission of inquiry, which was a whitewash. The Government of Canada more or less said so, and maintained its position on the boycott after the Sri Lanka report. It rejected the report as failing to address the human rights concerns arising from the end of the civil war. Very good, but if we want to promote human rights, we have to protect refugees. That is obviously true for the individual claimant, but there is an overall aggregate linkage as well. Protecting refugees enhances respect for human rights in the country fled. Failure to protect refugees shows indifference to the plight of victims.

When resettlement states say no to refugees or gives a hard time to refugees, what violators hear is that what they do, they can do with impunity, without consequences. Bill C-31 is bad in principle, but it is even worse in context. It says to the Government of Sri Lanka, “Go ahead, mistreat the Tamil minority. We don't care.”

The second policy conflict is a statement of Minister Jason Kenney in Parliament in October 2010, again a statement with which I agree. He said:

> ...we have begun preliminary discussions with our international partners, including Australia, which obviously has a great stake in this issue, and with the United Nations High Commissioner for Refugees to pursue the possibility of some form of regional protection framework in the Southeast Asian region.
>
> In part that would entail encouraging the countries now being used as transit points for smuggling and trafficking to offer at least temporary protection to those deemed by the UN in need of protection and then for countries such as Canada to provide, to some extent, reasonable resettlement opportunities for those deemed to be bona fide refugees, which is something we are pursuing.

Again, very good, but this policy of encouraging the countries now being used as transit points for smuggling and trafficking, although it sounds fine, is basically not happening.

● (1650)

One reason for the mistreatment of asylum seekers in Asia is the pressure put on those countries by resettlement countries. Another reason is the poor example resettlement countries give.

The logic behind the designated foreign national provisions is to discourage new arrivals from coming, like those on the *Ocean Lady* and the *Sun Sea*. Aside from its cruelty, it is likely to have a perverse effect, leading countries of proximate refuge to mimic its cruelty and prompting asylum seekers in those countries to flee in much the same way the passengers on the *Ocean Lady* and the *Sun Sea* did.

To a certain extent, Minister Kenney recognized the problem, but he said we needed a short-term solution and a regional framework with a mid-term solution. Now we're 17 months from that statement about a regional framework, and as far as I can tell, nothing has happened.

In the meantime, what we have to look at in discouraging flight is not only creating disincentives to flight, but also creating incentives for people to stay. By setting a poor example to countries of intermediate refuge, we are removing the possibility, or discouraging the development, of these incentives.

The contrast among the various government policies dealing with Sri Lankan Tamil refugees and Sri Lankan human rights are so striking that we can legitimately ask what's going on. It seems disorganized, to say the least.

One answer is the manner of government policy development. The arms of government dealing with human rights and refugees are separated. International human rights promotion is the domain of the Department of Foreign Affairs. Refugee protection falls within the bailiwick of the Immigration or Public Safety departments. While there is an administrative logic to this sort of bureaucratic separation, it makes divergence between promotion of respect for human rights and refugee protection all too easy.

The designated foreign national provisions of Bill C-31 should be withdrawn from the bill for all the reasons my colleagues have given, but also because they're not consistent with overall government policy. They clash so directly with other policies that they need to be reconsidered.

The government should be presenting a coordinated approach to human rights, refugee protection, and refugee resettlement. My hope is that the government will abandon its present clash of policies and instead present to Parliament a policy where promotion of respect for human rights abroad and protection of refugees work together.

Thank you very much.

The Chair: Thank you, sir.

Mr. Dykstra.

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

Mr. Matas, I can't resist. You've built the thesis of your argument on Foreign Affairs not linking with Citizenship and Immigration with respect to.... You used Sri Lanka as the example. Are you aware that there was a delegation of this government that went to Sri Lanka, which delegation consisted of a member of Parliament from Citizenship and Immigration and a member of Parliament from Defence and also from Foreign Affairs?

Mr. David Matas: Yes, I am.

To a certain extent, I am presenting my plea to you as parliamentarians, because there is certainly a lot more connection between parliamentarians than there is among bureaucrats on these issues.

Mr. Rick Dykstra: Are you aware of the outcome of that trip and the message that was delivered to the Minister of External Affairs of Sri Lanka? It was very consistent with our message on treatment and the belief that human rights exist and should exist and should be emphasized.

Mr. David Matas: Yes.

Ms. Jinny Jogindera Sims: A point of order, Chair.

The Chair: Excuse me, Mr. Matas.

Ms. Sims, on a point of order.

Ms. Jinny Jogindera Sims: I just want to remind my honourable colleague across the way that we are here to address Bill C-31.

Mr. Rick Dykstra: I'd like to remind my honourable colleague that David Matas used the example of Sri Lanka as a way to build his argument on how to change Bill C-31.

The Chair: I don't think it's a valid point of order.

Continue, sir.

Mr. David Matas: My answer is yes, I'm 100% behind the push to promote respect for human rights in Sri Lanka. I think that's valid. I think it's important. I think what parliamentarians have done is good. The problem is it's inconsistent with Bill C-31. That's the problem.

Mr. Rick Dykstra: Can you explain to me why it's inconsistent that we respect human rights here in Canada and respect human rights in Sri Lanka? You're saying that's inconsistent.

● (1655)

Mr. David Matas: Because we're not respecting the human rights of Sri Lankans who come here. That's the problem.

Mr. Rick Dykstra: I see. And why is that?

Mr. David Matas: We're detaining them for lengthy periods of time without judicial review. We're denying them family reunification. We're putting children in detention. We are denying the possibility of error correction. We are mistreating refugees.

Mr. Rick Dykstra: Have you been to Sri Lanka?

Mr. David Matas: No.

Mr. Rick Dykstra: Do you understand the difficulties the Tamils face in the northern part of the country and the fact that they can come here, and choose to come here, across an ocean, in spite of great risk to themselves, even when they understand that the principles we would set in place in this bill still provide a much better life for them in the long run than what they would have had prior to three years ago, to the end of the civil war?

Mr. David Matas: The fact that people and their children are better here in detention, and they don't get an appeal and they are still better off than in Sri Lanka, to me, is not a justification for the legislation.

Mr. Rick Dykstra: You're the one making that argument; I'm not.

Mr. David Matas: I'm not saying the legislation is justified. I'm not arguing that.

Mr. Rick Dykstra: No, but you're arguing that somehow there's a difference in the treatment of an individual from Sri Lanka, with respect to human rights...how we feel about it internationally versus how we would treat them here in Canada. I can't comprehend how you attach those two together.

Mr. David Matas: If you say to people who are refugees from a country, who are fleeing human rights violations, “We don't want to protect you, we don't want you here, and we're trying to discourage you from coming”, that's saying we don't care about the violations in the country they come from.

Mr. Rick Dykstra: Actually, that's incorrect, because the minute a person or a family achieves refugee status here in Canada, they would immediately be given permanent residency.

Mr. David Matas: No, they are not immediately given permanent residency. There's a five-year delay.

Mr. Rick Dykstra: No, that's not true.

Mr. David Matas: It's a five-year delay from the date of the claim. Once designated foreign nationals are recognized, they do not get permanent residency under this bill.

Mr. Rick Dykstra: What they get is the ability to be approved for refugee status. They have temporary...they have the five-year allowance to live here in the country. Then they are given PR residence and are allowed to achieve the goal, if they so wish, to bring their families here. Nothing stops their families from applying for that same refugee status as they have.

Mr. David Matas: If they are outside the country.

Mr. Rick Dykstra: They can do it from their country of origin.

Mr. David Matas: If they are outside the country. What's more, because of the denial of travel documents during those five years, they can't even visit their family outside of Canada. It's a forced family separation.

Mr. Rick Dykstra: So someone who flees their country of origin because of a risk of death should be allowed to go back.... You would advise those individuals to go back to their country of origin to face that same potential risk?

Mr. David Matas: No, but if they could travel, they could at least visit their family in another country.

Mr. Rick Dykstra: Thanks.

Mr. Rashid, we haven't had a perspective with respect to health care at the table here. I wondered if you have had a chance to treat any of your patients at any of the detention facilities we have in the country.

Dr. Meb Rashid: No, I have never actually had the opportunity of working at a detention facility.

Mr. Rick Dykstra: So your experience has been post.... When a refugee comes to you, generally speaking, it's when they have been approved as refugees.

Dr. Meb Rashid: I've worked with refugees at different points in their migration. I've certainly seen a lot of people at the point when they've arrived and put in a refugee claim. I have seen a lot of resettled refugees within the first couple days of arrival. I've had a smaller number of people who have been in detention for short periods of time.

Mr. Rick Dykstra: Have any of those individuals acknowledged to you, from a health perspective, that they felt like they were in a prison, or that they felt that in their time in detention they were being treated fairly?

Dr. Meb Rashid: It's interesting you mention that. I had a patient, probably about three or four weeks ago, who had come from an African country. He was fleeing persecution. He hasn't had his hearing yet, but he has some very obvious evidence of violence that was perpetrated on him. He was in detention for just a month and came to see me. I asked him a few questions, and he certainly made a point of saying he was treated very well. People were kind. But it broke him. He wept as he told me the story. It wasn't because of what people were doing. It wasn't the food he was given or the conditions within detention. But he never expected to be put in detention here. That had happened in his country of origin. He was shocked that it had happened in Canada when he arrived.

● (1700)

The Chair: Thank you, Dr. Rashid.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you to both of you for coming to make the presentations you did.

Under this new legislation, Bill C-31, we're talking about the potential for a detention for up to a year, and then over the next five years people not being able to have travel documents or to apply. That's very clear in the legislation at face value. If there is something else in the works, we certainly don't know about it.

Recently, you might have heard some announcements. It seems we have a government that has got into the habit of making proclamations, because those are ministerial orders or announcements. This bit was built into the budget, and it was the reduction in health care benefits to refugees. In light of that announcement, what kind of an impact, one way or another, do you think that would have on refugees arriving on our shores, and what kind of a case could be made for these refugees getting good health care benefits to have long-term benefits for Canada, for us as a society?

Dr. Meb Rashid: Maybe I can fill that one in. I think the announcement that came out last week has been shattering for a lot of us clinicians who work with refugee populations.

It's hard for me to understand the motivations for it, but it seems like it's been presented as a deterrent for people to come. I can't help but see it framed as targeting the Hungarian Roma. They certainly are the largest group of people we're seeing. There is a lot of cardiopulmonary disease in that population, from what I'm seeing, so certainly the health care costs are high.

What's interesting for me with that particular population is that the folks I've seen have arrived with full bags of medications they pour on the counter and a multitude of different diagnoses. I don't think they had struggles getting health care back home, and I can't speak to the quality of health care, but I don't see that as a draw factor for this population.

What I'm worried about, and I know this will happen after the June 30 date...there are people who are diabetics and hypertensives who will stop taking their medication and will end up in emergency rooms, hopefully without horrible outcomes. I don't think the cost savings are going to be as high as the $20 million that's been projected. I think it could be devastating. We have pregnant women in our practice who are going to lose their care. I'm not sure what they'll do. We have kids who are sick in our practice who won't have a place to turn to.

Ms. Jinny Jogindera Sims: Thank you.

They could end up delivering on street corners or anywhere else. We've had that happen before.

One of the other things I would like you to respond to is the kind of impact it's going to have on asylum seekers who are not coming from, let's say, well-to-do homes. Some of these asylum seekers have been on the run for a long time. Some have already been relocated to one, two, three countries, or they're onto their third country. They're leaving very difficult positions behind. Undernourishment is often an issue. Psychiatric trauma is often an issue.

What kind of a health impact is it going to have on them when we incarcerate them as soon as they land—these are irregular arrivals—on our shores?

Dr. Meb Rashid: We've looked at this particular issue with respect to the evidence that exists, and I think you're going to have a couple of speakers presenting tomorrow who will formally present some of the literature that's available on detention in refugees.

I just worked with a resident and produced a paper that's in the process of being published in *Canadian Family Physician* journal. There are a number of studies that come from places like Australia, some from the States, and some from Europe, which have shown that there are mental health impacts of putting people in detention—and perhaps it's not startling. I think even under ideal circumstances, having someone who does not have the freedom to walk the streets and can't go outside does have an impact, particularly on people who have faced trauma. The extent of the duress seems to be correlated with the length of time in duration. Some interesting small studies have come out of Australia that have actually looked at people who are in the community and a similar group of people who are in detention and have found the rates of mental health issues are much higher, although the cohorts were quite similar.

Yes, I think absolutely there is a concern that we might be re-traumatizing people who have already demonstrated they are quite vulnerable.

● (1705)

Ms. Jinny Jogindera Sims: This could be one of those examples of a penny wise and a pound foolish, when you look at the long-term effects on our economic well-being.

Mr. Matas, I think you very eloquently drew attention to the disconnect that exists right now. On the one hand, we're a country that is very articulate about defending human rights. Yet we're in the process of signing all kinds of agreements with countries where we know there are some very serious violations of human rights.

At the same time that we want to project ourselves as great defenders of human rights, and we have been, we're saying to people fleeing very difficult circumstances—and I'm not going to list them all again—that once you land on our shores, if you arrive by plane and you're fortunate enough to have enough money or somebody can pay for your airfare, we will treat you one way. But if you land on our shores and you come in a group, then we're going to put you in prison. We're going to create this two-tiered system that makes you a victim once again.

I don't see imprisoning people who are looking for asylum as a way of deterring smugglers. The smugglers will move on; they will become more sophisticated. But what message does this legislation send to people who are desperate around the world and are looking for a safe haven?

The Chair: Thank you. We'll have to do that in another round.

Mr. Trudeau.

Ms. Jinny Jogindera Sims: Could he make a quick response to that?

The Chair: No, he can't. I'm sorry. You can't talk for seven minutes and then ask a question.

Mr. Justin Trudeau: I'd like to go back to the exchange you had, Mr. Matas, with a member of the government side. You made a very strong statement that with this piece of legislation Canada is not—or potentially not—respecting the human rights of Sri Lankan refugees arriving on our shores. The response by the government side was understandably that the human rights violations they're experiencing in Sri Lanka are far worse than the human rights violations we will be submitting them to with unlawful detention.

Can you talk a little about what happens when a country like Canada, which is supposed to be one of the good guys around the world and a safe haven, demonstrates by arbitrarily detaining 16-year-olds and 17-year-olds that it is not willing to follow the UN Conventions on the Rights of the Child? By adopting this legislation, Canada would be rejecting the decisions of its own Supreme Court. We saw in the Charkaoui case that you cannot hold someone for more than 120 days without due process and without legal recourse. Canada would be violating a UN Convention to which we are signatories that says asylum seekers should be given a rapid path towards citizenship, which with this five-year delay on their permanent residency we are impeding.

What happens when a country that's supposed to be defending human rights around the world is no longer defending human rights for people because it doesn't like the fact that they had to use irregular means to get here?

Mr. David Matas: I'm happy to answer your question. I'm going to try to answer the previous question because to a certain extent they're similar questions. What message do we convey, and what happens when we do these things?

The message we convey is that it's okay to violate human rights. We're not protecting, we're doing it ourselves, we're setting a poor example rather than a good example. When we do something right, we get people who imitate us, and we improve the respect for human rights. When we do something wrong, we also get people who imitate us, and we lessen the respect for human rights.

The designated foreign nationals provisions of Bill C-31 address a real problem. Human smuggling is a scourge, and we have to think about ways of dealing with it. The word the minister uses is “disincentivization”. Disincentivization, which is kind of a clumsy word, is not the best way of dealing with it. We have to think about incentives to prevent people from coming in addition to, or even in preference to, disincentives to their coming in. The incentives for their not coming are improved human rights in their country of origin and improved protection in the intermediate countries like Malaysia, Indonesia, or Bangkok. The problem with this bill is it works against these incentives. It sets a poor example that erodes the incentives to improve respect for human rights.

● (1710)

Mr. Justin Trudeau: Thank you very much.

One of the big justifications we have on the government side for many of the measures is that it costs a lot to be constantly going before the tribunal every 30 days to justify the continued detention, that the health care costs of arriving refugees are prohibitively expensive, and that there are all sorts of things that make it very expensive to be absorbing people. But what we are hearing, particularly from the medical community.... I know that on Wednesday or Thursday there are going to be presentations from the medical community in Montreal, talking about the tremendous costs of the kinds of decisions we're heading to right now.

Doctor, can you talk a little bit about how much more expensive it's going to be to bring this in?

Dr. Meb Rashid: Yes. I'm a family physician, so I speak very strongly about prevention. One of my obsessions in the last few years, after working with new immigrants and refugees, is to try to capture them early. So obviously you want to treat tuberculosis before it becomes active, and you want to immunize people before disease manifests itself.

With the direction that I think Bill C-31 takes, certainly there is an implication in terms of mandatory detention and the aggravation of existing mental health issues. I think there is literature on that.

The Chair: Dr. Rashid, thank you.

I'm sorry, we're out of time, sir. We'll have to wait for another round.

Mr. Weston.

Mr. John Weston: Thank you, gentlemen, both for being here and for what you do. As somebody who has stood on the ground in Burundi and in the Congo and Rwanda, with Food for the Hungry, and who has recently been in Iraq and travelled to Pakistan on human rights missions, I love meeting people who dedicate themselves to working with people who have no voice and who have been subjected to the kind of things you talk about.

But I also want to refute the notion that there is some sort of division within our government, as you were suggesting, Mr. Matas. I'm proud of a minister, and many Canadians of all political stripes are proud of a minister, who is renowned the world over, as Minister Kenney is, for defending human rights, for going to China, and for going to Burma—at least we had our Minister of Foreign Affairs in Burma recently—and for knowing the situation of the refugees in Syria and Jordan who have tumbled over the border from Iraq. This is a minister who is a renowned human rights advocate.

So while you may disagree with aspects of the policy, I fear we may be getting the wrong answers by asking the wrong questions. I suspect that you are in favour of expediting the process for people who are legitimate refugees. So when you point out individual cases that may go the wrong way as a consequence of Bill C-31, it doesn't mean we should throw out the baby with the bathwater.

What I'm saying to you is, let's not suggest this is a dichotomy, an either/or situation.

Maybe, Dr. Rashid, you can comment on the importance of our expediting the process. We now look at over 1,000 days, on average, for a refugee claimant who is clearly a refugee, and all Canadians want that person to receive status as quickly as possible. That timeframe is going to be reduced to a small percentage of that. How do you feel about that improvement in the compassionate treatment of such an individual?

● (1715)

Dr. Meb Rashid: As I mentioned in my statement, I certainly laud the notion of trying to expedite the process. It's a very difficult process for people to struggle through, and certainly a delay can be very traumatic.

Your question about expediting it for legitimate refugees is fantastic. My question always is, how do we really know who is legitimate? I've met people who come from Somalia who perhaps don't have the evidence of their refugee claim the same way as someone from Mexico would. So my concern is really that relying on country of origin sometimes can lead us down the wrong path.

I completely agree. I think the process is much too long, and that adds a tremendous burden on people. Last year, with the original bill that was supported by all three political parties, when they spoke about expediting the process I think most people agreed that this surely was a step forward.

Mr. John Weston: Let me ask a similar question. On the question of detention—and both of you are concerned about that, I can tell—we have been told by Mr. Linklater, the ADM in the department, that the mandatory detention is there to investigate safety, security, and identification aspects. Even though Mr. Linklater, I'm sure, cares with compassion about the plight of refugees, he also cares about the security of Canadians in a world where terrorists have evil designs on the safety, the peace, order, and good government of Canada.

What would you say about that, the weighing of these competing considerations that we have to consider as we formulate policy?

Dr. Meb Rashid: I'm not a lawyer, but I certainly agree. That's always been a part of Canadian immigration policy. We want to know who comes in.

My concern about what's in the bill itself is tying it to the use of smugglers. As I mentioned in my statement, undeniably, smugglers are some of the worst criminals out there in the world. The consequence of using a smuggler has been.... The optics around that are such that it sometimes minimizes the need for people to actually have to use these agents. It sometimes is an act of desperation.

Putting people in this basket—they arrive, they have used smugglers to get here, and that becomes the ticket to put them in detention—concerns me.

Mr. John Weston: We may get it wrong as a consequence—

Dr. Meb Rashid: I hope not.

Mr. John Weston: —but we may also get it right and exclude people who really are the kind of evil individuals who would put people at risk for their own profit in order to get them into our country. We're weighing, aren't we? We have competing considerations. And we're clearly concerned about the arrival of the *Sun Sea* and the *Ocean Lady*.

Mr. David Matas: If I may react to your various comments, first of all, in terms of the minister, I do not mean my comments to be a personal attack on the minister. There are many things he has done and said that I admire and endorse completely. It's just that I don't agree with everything he does.

Similarly, there are many good provisions in Bill C-31—for instance, the fact of the appeal, which has been sitting around as unproclaimed provisions in the legislation for many years now. I'm glad to see we're finally doing it. But with the specifics of this, the designated foreign nationals, that's the only thing I'm focusing on because I find that particularly problematic.

The trouble in terms of the detention is that it's not flexible. We could find people safe. We could know who they are. We could know they're not a flight risk, but they still have to be in detention.

Somebody suggested there's a cost to these periodic detention reviews. But it's far more costly to keep people in detention when they don't need to be there, simply as a disincentive to prevent the next person from coming.

Mr. John Weston: You're saying there should be a mechanism to exempt out of the one-year mandatory minimum.

Mr. David Matas: Exactly.

Mr. John Weston: Could I ask about the biometric side? Are you familiar with that? We haven't heard either of you speak—

The Chair: No. We don't have much time, sir. You'll have to be very brief.

Mr. John Weston: All right.

The biometric uses the NEXUS kind of technology to distinguish between identified and unidentifiable people. Do you have any comment on that?

Mr. David Matas: I have no problem with that.

Dr. Meb Rashid: It's certainly not an area of my expertise, but anything that would expedite getting people out of things like detention—

Mr. David Matas: I think the issue is just around privacy concerns. But as long as they are protected, the actual identification shouldn't be an issue.

Mr. John Weston: You're right to expedite legitimate travellers and people coming to Canada.

● (1720)

The Chair: Thank you, Mr. Weston.

Ms. Sitsabaiesan.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): Thank you, Mr. Chair.

I only have five minutes, so I'm going to try to be quick, and I'll ask you to be brief as well.

I'm going to talk about the theme of actions versus words. Words we're hearing from the government side are that human rights are important, protecting human rights is important, but that actions really show punishment.

It's been suggested here that people from Sri Lanka or asylum seekers should be thankful to spend a year being detained here in Canada for possibly a year, and possibly in the general population in a jail. We've heard from CBSA officials that immigration detainees are sometimes kept in provincial jails, clearly allowing for re-traumatization of people who have already spent years—some people possibly 30 years—of their lives in a conflict zone. Perhaps you could talk about the health impacts, and also the overall impacts for these people.

I want to get my two questions in and then allow both of you to answer them.

Mr. Matas, you spoke a lot about the Sri Lanka situation. I am Canada's only member of Parliament who was born in Sri Lanka, so it's a very personal issue for me.

This bill, Bill C-31, is to apply retroactively to events that took place in 2009, up to 2009. We all know that 2009 was when the migrant vessel *Ocean Lady* came to Canada, and of course we know that the MV *Sun Sea* came to Canada in 2010.

I agree with you that it seems as though it's a very targeted attack towards Sri Lankan migrants who came here as asylum seekers. We know from the minister's opening remarks in the last Parliament that the bill was designed because of the Sri Lankan migrants.

Perhaps I could have you talk about whether this is consistent with the Constitution, and Dr. Rashid could talk about the health impacts and re-traumatization.

How much time do we have, so they can know how to split it?

The Chair: You just talked for two minutes, so they have three minutes.

Ms. Rathika Sitsabaiesan: Okay.

So you each have a minute and a half.

Dr. Meb Rashid: I'll give him a bit more time, because I think we've already suggested....

There seems to be a compelling body of literature out there suggesting that detention, even in the best-controlled scenario, certainly can re-traumatize people. I think you'll have a presentation by a couple of colleagues tomorrow around that.

Mr. David Matas: In Manitoba the refugee or any immigration detainee is put in the general population, because there isn't a specific.... In smaller centres, that's the rule.

In terms of constitutionality, well, I haven't really talked about that, but I am a lawyer. In fact I was a judge in a moot court debate this year—it was held across Canada, but I did it just in Manitoba—where the issue was the constitutionality of this legislation. My colleagues on the panel were lawyers and judges who weren't involved in immigration, and they were astounded that this was actually happening. They were convinced that this was unconstitutional.

I mean, I'd be surprised if this legislation survived. But that's not my only concern, obviously.

Ms. Rathika Sitsabaiesan: So you feel it's created as a direct attack on the Sri Lankan people, the asylum seekers who are coming here. Is that correct, my extrapolation?

Mr. David Matas: I wouldn't quite put it that way.

Ms. Rathika Sitsabaiesan: Okay.

Mr. David Matas: What I feel is that it's inconsistent. As I say, the government has been quite good on human rights in Sri Lanka. It's just that this bill does not carry forward that message consistently. It's at cross-purposes with other things. Also, in terms of regional resettlement or regional policies, they have some good statements; it's just that this is not consistent with that.

So I see the left hand not coordinating with the right hand here.

Ms. Rathika Sitsabaiesan: Basically, if I may, I'm hearing that the government is just sending mixed signals, saying yes, we support the need for human rights and we don't support the violations that are occurring in the island of Sri Lanka, but our actions are actually saying that we do condone the human rights violations that are happening in the island of Sri Lanka. Is that correct, sir?

Mr. Rick Dykstra: That has nothing to do with Bill C-31.

The Chair: Stop the clock.

You know—

Mr. Rick Dykstra: That's nothing to do with C-31. That's an allegation. If you want to make it outside, make it public, go ahead.

Ms. Rathika Sitsabaiesan: Mr. Chair, could—

Mr. Rick Dykstra: But don't make allegations that are completely untrue.

Ms. Rathika Sitsabaiesan: A point of order, Chair.

The Chair: No, we're in a point of order right now.

Ms. Rathika Sitsabaiesan: I didn't hear a point raised.

The Chair: You wait for his point of order; then you can talk on your point of order.

Mr. Dykstra.

Mr. Rick Dykstra: If Ms. Sitsabaiesan wants to make allegations about what her perspective is or is not on the Canadian government or this party, that's fine, but it has nothing to do with Bill C-31. She can go out there and do it in public and get as much press as she'd like to, because I know that's exactly what she's trying to do. It has no place around this table when we're trying to deal with a bill.

Whether you agree or disagree with it, the bill is a very difficult one to work through, and I'd appreciate it if she could stick to the topic and not meander onto human rights issues that have nothing to do with this bill.

● (1725)

The Chair: On this point or another point, Ms. Sitsabaiesan?

Ms. Rathika Sitsabaiesan: On this point, and then I also have my own point to raise after this.

The Chair: Let's deal with this point.

Ms. Rathika Sitsabaiesan: Okay.

On this point, Mr. Chair, if you recall, the witness's statement was primarily based on Sri Lanka. I was taking what he mentioned in his own original statement and reiterating the points the witness had made. So I do believe that my comments were in order, Mr. Chair.

The Chair: And I agree. The problem—and I agree, he's out of order—is that both sides are provoking each other, and we should remember that.

Mr. Karygiannis, you have a point of order.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): I'm glad you agree that Mr. Dykstra is out of order. You spoke to it, so I won't.

The Chair: Okay. Good.

Well, go ahead, Ms. Sitsabaiesan. You still have a few seconds left.

Ms. Rathika Sitsabaiesan: Is this on my point or...?

The Chair: I thought we were finished with that. We're all friends again.

Ms. Rathika Sitsabaiesan: Okay.

The Chair: We'll just keep the clock going.

Ms. Rathika Sitsabaiesan: I raised my own point of order, Mr. Chair, because I didn't hear Mr. Dykstra raise a point of order. I just heard him start yelling in the committee meeting.

The Chair: These things happen.

Your clock is running.

Ms. Rathika Sitsabaiesan: Now my clock is running?

The Chair: Your clock is running.

Ms. Rathika Sitsabaiesan: Okay.

I'll just give the time to you to respond.

Mr. David Matas: I think your phrase “mixed signals” is right. I would agree with that. I think what we're getting is mixed signals.

What I would encourage the government to do is to give a consistent signal, with everything moving in the same direction.

Ms. Rathika Sitsabaiesan: Thank you very much.

The Chair: Mr. Menegakis.

Mr. Costas Menegakis: I'm passing my time over to Mr. Leung.

The Chair: Mr. Leung.

Mr. Chungsen Leung (Willowdale, CPC): Thank you, Mr. Chair.

My concern deals with the medical aspect.

Dr. Rashid, you probably experienced SARS in 2003. It's probably at that time where it was necessary to contain people in a safe environment. What I'm suggesting to you is that if there's a mass arrival of refugees, it is our responsibility to first of all identify their documentation and then to at least medically screen them to make sure they do not cause some pandemic in our society. I think that is only fair to safeguard the health and welfare of Canadians.

Now, for that reason, if we have to go through a whole lot of, let's say, illegal arrivals on a mass basis, then it is not possible to separate those who are genuine refugees versus those who aren't, because they all have to be detained in order to clear that medical process.

Would you not agree with that?

Dr. Meb Rashid: I assume what you're getting at is the immigrant health exam.

Hon. Jim Karygiannis: I have a point of order.

The Chair: Mr. Karygiannis.

Hon. Jim Karygiannis: Thank you, Chair.

I'm totally confused as to SARS and the question that is put, because with SARS we never confined people to a jail situation or a holding tank situation. I want, for the record, to be perfectly clear that with SARS people were asked to voluntarily put themselves into their houses. There was absolutely, categorically, no sense that these people, as soon as they got off the plane, were to be detained.

The Chair: Thank you.

Hon. Jim Karygiannis: I want to make that perfectly clear, and I want my colleague to make a clarification on it.

Mr. Chungsen Leung: Your point is well taken.

I just want to turn the question to you. Do we not need a central point to at least have some clarification that these people do not bring a pandemic into this country?

Dr. Meb Rashid: As far as I know, and again this is not my area of expertise, there is something called an immigrant health exam, which people get before they migrate here. People who arrive through other means get an immigrant health exam once they put in their refugee claim. If you're a visitor who comes for less than six months, you don't have an immigrant health exam.

The idea of immigration being a control on infectious disease probably is not the way the current scenario is laid out. It perhaps wouldn't even be very effective. If so, what we would be doing is targeting the 500 million people who are coming through Canada for short visits, because I think the risk of infectious disease extends across the globe, and—

● (1730)

Mr. Chungsen Leung: You're correct, but in the current situation, if...[*Technical difficulty—Editor*]

The Chair: Could you repeat that, please?

Mr. Chungsen Leung: I said if they are coming in as proper immigrants, they are medically pre-screened before they arrive in Canada, but if they come in as irregular arrivals, they are not pre-screened and they have to be pre-screened...[*Technical difficulty—Editor*]

The Chair: The red light needs to be on. We seem to be having some problems with everybody, so just make sure that your red light is on when you're speaking.

Dr. Meb Rashid: It's my first time in committee.

Just to answer that more succinctly, everyone I see who's a refugee claimant must, when they arrive...[*Technical difficulty—Editor*]...that immigrant health exam...[*Technical difficulty—Editor*]...look at HIV, active tuberculosis, and that...[*Technical difficulty—Editor*]

The Chair: It's a good thing we've come to the end of the meeting, because we seem to be having technical problems.

Dr. Rashid, Mr. Matas, thank you very much for your comments.

We will suspend, and hopefully these machines will be fixed.

● (Pause)

● (1740)

The Chair: I call the meeting to order.

To the Department of Labour in New Zealand, I guess it's good morning to you.

Can you hear me?

Ms. Christine Hyndman (Manager, Immigration Policy, Policy and Research Group, Department of Labour, New Zealand): Indeed.

The Chair: You're tomorrow, we're yesterday; you're Wednesday, we're still Tuesday.

It's a pleasure to have you, and I thank you for taking the time to talk to us. I gather you have a piece of legislation that's either in the works or has been passed that's similar to the one our government's putting forward.

I'm going to ask you to identify yourselves as I call your names.

Christine Hyndman, you're the manager of immigration policy, from the policy and research group. I can tell who you are.

Ms. Christine Hyndman: Indeed. Bonjour.

The Chair: Stephen Dunstan is the general manager of the settlement and attraction division of the immigration group.

Mr. Stephen Dunstan (General Manager, Settlement and Attraction Division, Immigration Group, Department of Labour, New Zealand): Yes, sir, that's me.

The Chair: Finally, Fraser Richards is the acting director of legal business in the legal group.

On behalf of the immigration committee, I'd like to again thank you for coming to speak to us on this piece of legislation. Normally we ask one or all of you to speak for up to 10 minutes for the group. Then there will be rounds of questions. We have three caucuses here —Conservative, NDP, and Liberal—and questions will be asked of you.

To start, is someone prepared to make a presentation of up to 10 minutes?

Ms. Christine Hyndman: I am.

The Chair: Thank you. Please proceed, Ms. Hyndman.

Ms. Christine Hyndman: First, we're very honoured to be given the opportunity to present to the standing committee. You're correct that we have a piece of legislation ourselves that is shortly to have its first reading. It was tabled on Monday, the day before yesterday, and will have its first reading and be referred to select committee for examination by Parliament tomorrow, Thursday.

I would first like to say that New Zealand is in a different situation from Canada. Obviously we share many similarities: we have the same political system; we are signatories to the convention on the status of refugees. But New Zealand has the unusual situation of being the most isolated country in the world. We're 1,600 kilometres from our nearest neighbour, which is Australia, and we are separated by extremely dangerous waters; we therefore have nobody walking or driving across our borders and many fewer people arriving by boat, legitimately or otherwise. Almost everyone who comes to New Zealand comes here by air, and we have secure borders because we have at least a three-hour air flight from any port to any of our international airports, and often more like ten hours.

We share the same concerns around unauthorized movement of people. We have the same situation of being a country founded to a very large extent on immigration, and one that welcomes legal migrants, both permanent residents and our tourism and student and worker populations. We are concerned to ensure that the situation in sending countries as much as possible is ameliorated so that push factors do not impinge on people to the extent that they desperately try to seek refuge in another country.

Like Canada, New Zealand is very interested in working with other countries to help ameliorate the situation of people in the countries from which asylum claimants are most likely to be sourced. Nonetheless, there is another side as well, which is deterring the smugglers who want to make profits from exploiting the desperation of people looking for a better life who may not be able to access what they are seeking.

With regard to the bill, just briefly, it is specifically about deterring a mass arrival by sea. We have never had a mass arrival. We have had reports of people having set out to attempt to come to New Zealand. As far as we're aware, everyone who has tried to do that has either been shipwrecked on land or has drowned at sea. We do not consider this to be something that people should ever be driven to, so the bill is very focused upon deterring people through a combination of some measures that are really to ensure that we could manage a mass arrival as well as possible, but also to ensure that, while we remain within what the convention says we should do with regard to people who are found to need protection, they would not have all of the opportunities around family reunification that are given to other people who migrate through other means.

We have many fewer asylum seekers than Canada, as I think you could probably have inferred from what I've already said. Last year we had around 300 people claim protection. That was mostly on shore; it was mostly people who had been granted visas or who had entered visa-free and who claimed after arrival. About a third to a quarter came at our borders. Wherever we are not able to ascertain people's identity, then they are detained, generally in a very low-security institution, until we can ascertain their identity.

● (1745)

People who are determined to be a risk, of course, will be detained in a higher-security institution. We don't have any immigration-specific facilities because the numbers are so small, so it does mean that people would generally be detained in a prison.

We approve around one-quarter to one-third of people, as it is found that around one-quarter to one-third of people to have justified claims. The vast majority of them will proceed to permanent residence after that.

With our bill the difference will be that they will have a three-year period of being on a work visa, during which time they will be entitled to social security assistance if they cannot find employment. At the end of that three-year period their circumstances will be reassessed against the convention's grounds, and if they're found to still require protection, then at that point they will be granted permanent residence and immediate family will be able to join them.

I'm trying to think what else would be of interest.

The Chair: You don't have to talk for the full 10 minutes.

Ms. Christine Hyndman: It's fine. Okay.

The Chair: Each of my colleagues in the first round will have up to seven minutes to speak.

Mr. Menegakis, who is with the Conservative government, will be asking you some questions.

Mr. Costas Menegakis: Thank you.

Good morning to you all. Thank you so much for joining us today. It is certainly a pleasure for us to hear from our friends in New Zealand, albeit a little bit far from where we are, but I'm sure with these telecommunications we'll be able to communicate properly.

I have a few questions for you. We're, of course, experiencing some difficulties in dealing with wait times and backlogs of people, processing them through our system. We're trying to make some changes with our proposed Bill C-31.

When the power to designate countries of origin was introduced through the Balanced Refugee Reform Act, the minister could designate countries, regions of countries, and classes of nationals. This nuance was in recognition of the fact that safe countries may not be safe for everyone. Bill C-31 amends the power to designate, limiting it to whole countries only.

If your government uses a list of designated countries of origin, must countries be designated as a whole, or do you have distinctions for regions and classes of nationals?

● (1750)

Ms. Christine Hyndman: Thank you for your question.

Our numbers are really too low for us to have needed to move in that direction, so we do not classify countries. Our immigration act is relatively new; it's 2009. That does give us the power to designate safe third countries, which is obviously a separate point where people have transited a country that is signatory to the convention and where they could have claimed. That would be subject to an agreement with the country, and we have not made amendments to actually implement it.

With regard to your main question, therefore, no, we do not have the legal power to do that, and we're not envisaging it at this point.

Mr. Costas Menegakis: One of the phenomena we're experiencing, which we were not, quite frankly, expecting, is that we are seeing an unusual number of refugee claims from people coming from the European Union. In fact, it's a much bigger percentage than people we have coming from Asia and Africa. It's a little bit unusual for us, given the fact that the European Union is comprised of 27 democratically elected countries, and certainly someone who feels a need or has a need to leave their country for some protection or safety somewhere else has an immediate choice, if you will, of another 26 counties in the union that they can go to.

I wonder if you're experiencing the same phenomenon there in New Zealand, or if you could comment on this.

Ms. Christine Hyndman: We are not. We have had claims in the past from people from generally central and eastern Europe, but at very low levels. The country at present we are experiencing a spike from is Fiji, which obviously is much closer in our vicinity, only three or four hours away by air. So the answer is no.

Mr. Costas Menegakis: Thanks.

If this bill were to be implemented here in Canada and become law, the time to finalize a refugee claim would drop from the current average of 1,038 days to 45 days for claimants from our designated countries of origin, or 216 days for all other claimants.

I wonder how that compares to your system. Could you give us a little bit of statistical information on how long it takes to process someone in New Zealand?

Mr. Stephen Dunstan: We do it quite quickly. We set a benchmark of 140 days, and we try to process them within the 140 days. If the people are turned down at the first refugee determination, they can go to appeal. It can take up to a year at appeal.

Mr. Costas Menegakis: Well, 140 days would roughly be about 15% of the time it currently takes us to process a refugee here in Canada, so it certainly is very admirable.

How am I doing for time, Mr. Chair?

The Chair: You have a couple of minutes.

Mr. Costas Menegakis: I have a couple of minutes left, and I would like to pass them on to my colleague, Roxanne James, if that's okay with you, Mr. Chair.

The Chair: Of course.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair, and thank you to my colleague.

I have a couple of questions.

I'm not sure whether it was today or yesterday, with the time change here, but you talked about a new package of policy and legislative changes you are processing in an effort to deter human smuggling. You indicated that it's at first reading. You've indicated also that it is not necessarily the same issue in New Zealand as it is here in Canada, but we both recognize that human smugglers do what they do for various criminal reasons. It is also a threat to the safety and security of the people who use human smugglers to go to a particular country.

I'm just wondering if you could tell us a bit more about the specific changes in the policies that are at first reading. Could you speak to those specifically?

Thank you.

● (1755)

Ms. Christine Hyndman: Certainly.

It is a package of legislative and policy changes. The legislative changes relate to the ability to detain people on a group warrant for up to six months. At present, for people who are detained, whether in a low-security or a high-security facility, the warrants are obtained on an individual basis and they have a maximum lifespan of 28 days. Basically, what is being asked of Parliament is the capacity to detain people on a group warrant for up to six months to enable us to deal with a group of perhaps 500 people.

Ms. Roxanne James: Can I just—

The Chair: No, there is no more time. You might as well let her finish.

Ms. Roxanne James: I have a quick question with regard to that.

With respect to the detention of someone for six months, is there any concern about international obligations?

The Chair: No, no, don't—

Ms. Roxanne James: You've indicated that there is no more time, and maybe she can't answer, but I'd just like to get that question in, because I think it is very key.

The Chair: You can ask the question, but the time is up.

Thank you very much.

The next person to ask questions is the critic for the official opposition, the New Democratic Party, Ms. Sims.

Ms. Jinny Jogindera Sims: Hello, and thank you for giving up some of your time to share your experiences with us.

Considering that your country has a very low level of asylum seekers or refugees trying to come to your coastline, because—I think I'm right when I capture what you said—the coastline is too treacherous and they have either died on the way or haven't got to you by the coastline, what is the motivator behind this piece of legislation, if you haven't had mass arrivals on your doorstep?

Ms. Christine Hyndman: It's effectively to try to ensure that we don't have a mass arrival. It is very much a piece of deterrent legislation.

We have seen arrivals occur, obviously. Australia, our nearest neighbour, has a high level of boat arrivals, in much smaller vessels, and is having a lot of issues dealing with the number of people they've had arriving. The size of the boats that have arrived in Canada are the size that could have come to New Zealand. Those boats are large enough to make it to New Zealand. We very much hope that we shan't have one.

Ms. Jinny Jogindera Sims: I've been reading some of the press covering your proposed legislation. One of the things your minister talks about is queue jumpers. We're hearing that here as well. There are people who are queue jumpers when they come by boat.

Are you aware of any international list of refugees with a certain order in which they must get asylum?

Ms. Christine Hyndman: Obviously there is no list of people, and if there were, it would be anonymous.

Ms. Jinny Jogindera Sims: I appreciate that because—

Ms. Christine Hyndman: New Zealand is one of 17 countries that takes an annual quota of refugees per year. We accept about 750 people each year under a quota. I think the minister was reflecting that New Zealand does seek to meet its international obligations very largely through the quota, which is focused on people who are most in need. We tend to take people who are particularly disadvantaged.

Ms. Jinny Jogindera Sims: Thank you.

When I look at the asylum seekers who often are leaving very violent and traumatic situations, by the time they put themselves in a boat to come to a place like New Zealand, taking on the dangers of the oceans and all of that along the way...do you believe they have a legitimate reason to escape from where they're escaping from? It's certainly not a cruise ship they're getting on, right?

● (1800)

Ms. Christine Hyndman: Well, in this case, as we haven't had an arrival, I probably can't comment. But I think we do recognize people's right to seek asylum. That is an international right that is enshrined in the convention and the protocol to which New Zealand is a signatory.

We do not want people to think that getting on a boat to come to New Zealand is a good idea, very largely because we actually think there is a high chance that they wouldn't make it.

Ms. Jinny Jogindera Sims: One of the key ways to fight smuggling is to actually work with other countries on fighting human rights violations that occur in different countries—in other words, attack the root cause. On the other hand, looking at your legislation, do you feel you can justify a mass detention of people who are already fleeing for their lives? They wouldn't put their lives in danger to get to your country if they weren't scared for their lives in whichever country they were in before.

Ms. Christine Hyndman: We do believe very much in working with other countries to address the issues in the countries of origin. New Zealand is a very active member of the Bali process, in which Canada is also a participant. That is very focused on preventing the root causes of asylum seeking.

Ms. Jinny Jogindera Sims: It seems to me that here...and I suppose I'm a little bit puzzled by the motive behind the legislation. It's not for you to justify because I know you're part of the staff there. It seems that in a country that hasn't had boatloads arrive, even one, here you're taking a very extreme approach, an approach that actually has been demonstrated not to work.

I'm going to take Australia as an example. Australia has found, or evidence has shown—and we've had a number of witnesses testify to that—that detention actually does not act as a deterrent. It once again punishes people who are already suffering and are victims.

Ms. Christine Hyndman: Obviously, our situation and our policy package is somewhat different from Australia's current situation. But yes, the detention itself is not actually the major deterrent. The detention is intended to ensure that we can safely house people whose identity we are not certain of for the period of time that it takes us to determine their identity. But Australia's situation is very different.

Ms. Jinny Jogindera Sims: As soon as you have determined their identity and they have their status, will they get travel papers, and can they sponsor their family members to come?

Ms. Christine Hyndman: No. Once people are determined to need protection under the convention or the convention against torture—and the rest of the things it's against—we will give them temporary status for three years, reassess at the end of the three years, and at that point they would be able to be granted permanent status.

The Chair: Thank you.

Ms. Jinny Jogindera Sims: Thank you.

The Chair: Mr. Karygiannis, you have up to five minutes.

Mr. Karygiannis is with the opposition Liberal Party.

Hon. Jim Karygiannis: Thank you, and good morning, Down Under, if I might say.

In coming up with the legislation you've got in front of your Parliament today, did you have an opportunity to discuss this with the Canadian department and/or our minister?

Ms. Christine Hyndman: I have not been party to discussions. There may have been some general discussion around things that countries were thinking of, but we haven't undertaken consultation, as far as I'm aware.

● (1805)

Hon. Jim Karygiannis: Do your colleagues, Mr. Richards and Mr. Dunstan, know of any discussions with our minister, your minister, and/or the department in Canada?

Mr. Fraser Richards (Acting Director, Legal Business, Legal Group, Department of Labour, New Zealand): No, I know of no discussions.

Mr. Stephen Dunstan: No, we don't.

We've obviously been aware of the Canadian bill going through, but our legislation was developed in New Zealand for our circumstances.

Hon. Jim Karygiannis: You've got about, what, 300 people who come into your country as refugees per year, if I remember the number?

Ms. Christine Hyndman: At present. It was around two and a half thousand ten years ago—

Hon. Jim Karygiannis: And the number has dropped.

Ms. Christine Hyndman: Yes, it's much lower now.

Hon. Jim Karygiannis: How did that number drop? What did you do?

Ms. Christine Hyndman: We instituted some other mechanisms. A major one is advanced passenger processing, which means that everyone who is checking in on a flight with a trip where they will eventually end up in New Zealand is checked against the immigration computer system.

Hon. Jim Karygiannis: I appreciate that.

Out of the two and a half thousand people who applied for refugee status years ago, how many were found to be legitimate refugees?

Ms. Christine Hyndman: Fewer than 10%. At that point around 80% to 90%—

Hon. Jim Karygiannis: They were found to be legitimate refugees?

Ms. Christine Hyndman: No, the other way round. At that point, around 10%, I think, were gaining refugee status each year, so maybe around 200 to 250 of them.

Hon. Jim Karygiannis: Okay.

I've heard from my colleague from the NDP that your minister calls the migrants "queue jumpers". Has your minister used that term?

Ms. Christine Hyndman: He has used that term.

Hon. Jim Karygiannis: He has.

Has your minister used the terms "smuggled migrants and bogus asylum claimants"?

Ms. Christine Hyndman: I can't confirm that, I'm sorry.

Hon. Jim Karygiannis: You wouldn't expect a minister to use those terms, would you, and let me repeat, "smuggled migrants and bogus asylum claimants"?

Ms. Roxanne James: Excuse me, I have a point of order.

The Chair: A point of order.

Just one minute, Ms. Hyndman. We're going to have a little dispute here.

Ms. James.

Hon. Jim Karygiannis: Stop the clock.

The Chair: The clock is stopped, Mr. Karygiannis.

Ms. James.

Ms. Roxanne James: A point of order, thank you, Mr. Karygiannis.

The line of questioning is really accusatory toward our guests, who are here by teleconference, asking them what their minister refers to different parts of.... I don't understand where that question is going.

Maybe you should have been tuning in, because you're not a regular member of this committee, so—

The Chair: Oh, no, Ms. James, don't go there.

Ms. Roxanne James: But I have to say "point of order" on this particular type of questioning. I don't think it's fair to the guests who are sitting here before us. We're asking about their immigration system and not specific terminology or words that someone may or may not have heard. I just don't understand where this line of questioning is going.

Thank you.

The Chair: We'll wait and see. I think he's entitled to use those words.

Mr. Karygiannis, proceed.

Hon. Jim Karygiannis: Let me repeat that. Your minister hasn't used the words "smuggled migrants and bogus asylum claimants"?

Ms. Christine Hyndman: I can't comment, sorry. I can't confirm or deny.

Hon. Jim Karygiannis: But if a minister were to use those terms, you, as an individual, would be very upset, wouldn't you?

Ms. Christine Hyndman: I don't think I can respond to this in this situation, I'm sorry.

Hon. Jim Karygiannis: That's fine.

I want to thank you. You've been enlightening.

I've got to tell you that on our minister's website, the words "smuggled migrants and bogus asylum claimants" are used. It's a real shame.

The Chair: Thank you.

Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

I'm not sure, again, where that line of questioning went, but I thank you, Mr. Chair, for giving me an opportunity to finish my line of questions.

Previously, I'd spoken to you about your international obligations with regard to detention of up to six months. You were about to tell us whether you felt that met your international obligations. I know you say you are governed by the UN Convention and the Convention against Torture and so on.

Could you please comment on that, whether New Zealand is meeting its international obligations with this particular policy?

Thank you.

Ms. Christine Hyndman: We are confident that we are. Fraser will speak to the compliance with our Bill of Rights Act.

Mr. Fraser Richards: As the committee may or may not be aware, New Zealand has a Bill of Rights Act. It's not higher law, but all government bills are assessed against the Bill of Rights Act by another government department and by the crown law office.

One of the provisions of our Bill of Rights Act is that no one shall be subject to arbitrary detention. It has been found that our bill at this stage is compliant with our Bill of Rights Act in respect of arbitrary detention.

● (1810)

Ms. Roxanne James: Thank you very much.

I would like you to confirm that I heard you correctly. You mentioned that the point of detention is not to deter human smugglers but actually to give you the ability to find out who these people are.

Again, you've not had many instances of mass arrivals, but here in Canada, normally, the case is people arrive in large numbers and they don't have any documentation. Detention is necessary in order to find out who these people are. Is that the logic behind your reference to detention?

Ms. Christine Hyndman: Yes.

Ms. Roxanne James: Thank you.

On just one more point, you mentioned that you give refugees a three-year work visa and then at that point they're reassessed. Is that a correct statement? Maybe I misheard you.

Ms. Christine Hyndman: No, this is something that is proposed in this bill, only for people arriving by mass arrival by boat. What happens at present with people who claim and their identity cannot be established is that they are detained, generally in a low-security facility, which is a refugee specialist facility. At the point that their identity is ascertained, if they are deemed not to be a threat, then they will be granted a work visa and they can work or gain social security support.

Ms. Roxanne James: Thank you.

Did I hear you say that after three years they're reassessed? What does that mean?

Ms. Christine Hyndman: No. That can happen before they are determined or after they are determined. At the point that they are determined, they can be granted permanent residence. They are permanent residents effectively immediately, or as soon as the paperwork is completed.

It's only for the mass arrivals. It's a power that's in reserve, which we hope we will never need to use. Those people would be temporary for three years and reassessed at that point.

Ms. Roxanne James: Maybe I misheard you, but I heard something about if they're still found to be needing protection.... I'm not sure whether we're talking about mass arrivals or just refugees who come in through the normal process. Is it the normal process?

Ms. Christine Hyndman: No. The normal process is that we assess their need for protection once and if they're found to need protection; then they move to permanent residence.

For these people under our mass arrival, we would assess them twice. If they were found to need protection at the first point....

Ms. Roxanne James: What happens after three years if they're reassessed and they're found not to be needing protection anymore? I'm not sure if you answered that.

Ms. Christine Hyndman: We would seek to return them to their country of origin in the same way as the person who is not found to need protection under our standard processes.

Ms. Roxanne James: Okay. Thank you very much.

I started talking about international obligations, but is there any other part of this policy that you're implementing that you can share with us to help us with our situation here?

Ms. Christine Hyndman: We can provide you with a copy of the bill and communications material around the package. We'd be very happy to send that to the secretary of your committee.

Ms. Roxanne James: Thank you.

I believe you said that you don't necessarily designate a list of safe countries where you normally would not receive refugees from, but you mentioned safe third countries. How does that actually work?

Ms. Christine Hyndman: We have that capacity. Fraser can speak to it.

Mr. Fraser Richards: Yes, we have the capacity in our Immigration Act 2009 to enter into agreements with third countries that potentially refugee claimants would travel to New Zealand through. If we enter into such agreements, we'll be able to return people to those safe third countries for asylum claims, etc.

At the moment, of course, we haven't entered into any such arrangements with any safe third country, and it's my understanding that there are no plans to do so at this stage. It's just a facilitative measure that exists in our current legislation.

Ms. Roxanne James: There's just one last question, if I have time.

I'm just wondering whether you process all refugee streams the same way. Does everybody get the exact same application for when their claim is actually heard, processed, etc.? I'm just curious to know whether there is a differentiation between refugees who need attention first, legitimate refugees who need to be processed first, etc. I know you've said that it's not a huge issue in your country, but I'm wondering if you could comment on whether there is any application to that effect in New Zealand.

● (1815)

Ms. Christine Hyndman: Unfortunately, Stephen has had to leave, and he could have spoken to this with more knowledge, I think. But my understanding is that the refugee status branch will prioritize some individuals. In particular, people who are being held in prison will be interviewed as a measure of priority to determine their status in order to minimize the length of time they need to remain in the more secure places of detention.

But I think that is the major prioritization that occurs. There may be other people who can make an application, where the situation is something very exceptional, but apart from that, it's pretty much in date order, I think.

The Chair: Thank you.

The next speaker is Monsieur Giguère, who is a member of the official opposition and is with the New Democratic Party.

Monsieur Giguère.

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): Good morning, New Zealand.

[*Translation*]

Ms. Christine Hyndman: Good afternoon.

[*English*]

Mr. Alain Giguère: My first question is on the detention. Does the person inside your jail have a right to use habeas corpus?

Ms. Christine Hyndman: Yes. The way it works is that every 28 days, maximum, they must be brought before the court and a further warrant for up to 28 days obtained.

Mr. Fraser Richards: But there is a right at any stage to lodge an application for a writ of habeas corpus under the Habeas Corpus Act in New Zealand.

Mr. Alain Giguère: Thanks.

How many non-selected refugees do you receive by year?

Ms. Christine Hyndman: By air?

Mr. Alain Giguère: No, by year.

[*Translation*]

Ms. Christine Hyndman: By plane?

[*English*]

The Chair: You can speak in French, sir.

Mr. Alain Giguère: How many refugees did you receive last year?

Ms. Christine Hyndman: Last year, sorry. It's the Canadian "year".

Mr. Alain Giguère: That's very good.

Ms. Christine Hyndman: It was 287 in the 2010-11 year. So far, to April 14—so from July 1 last year to April 14 this year—there were 234 claims, of which 21 were second claims, so 213 new individuals.

Mr. Alain Giguère: It is not the same situation in my country. You multiply it by ten.

Ms. Christine Hyndman: But you are almost ten times larger than us. We have a population of 4.33 million. So we're a much smaller country as well.

Mr. Alain Giguère: Do you have any information on the situation in Australia? There is a very difficult situation in Australia, and I don't understand the difficulty of this government in the application of the new solution.

The Chair: We're having someone come from Australia tomorrow. Did you know that?

Mr. Alain Giguère: Yes.

I received information from the area. The inspiration for your law is probably coming from Australia. You have communication between the two governments.

● (1820)

Ms. Christine Hyndman: Yes. The situation with Australia is very different, of course, because they're much closer to their nearest neighbour. Indonesia is a couple of hundred kilometres away, so it's no distance at all. It's much more straightforward for people to get to Australia in small boats.

Mr. Alain Giguère: I understand that in New Zealand the problem of immigration and refugees is not a real problem for you.

Ms. Christine Hyndman: I think all problems are real problems within their own countries.

Mr. Alain Giguère: But it is not an important expense for your government.

Ms. Christine Hyndman: The global financial crisis means all problems are problems for governments at the moment, I think, but yes, I probably can't comment—

Mr. Alain Giguère: What is it as a percentage of your annual budget?

Ms. Christine Hyndman: Less than in some other countries; possibly a greater proportion than in other countries. I don't know. Sorry, I have not done the comparison.

Mr. Alain Giguère: You don't have the exact numbers?

Ms. Christine Hyndman: No. It's part of the vote for immigration overall, which is between $200 million and $300 million, so it is a proportion of that, and it's not the biggest proportion of that vote, but I can't tell you.... I can find the information for you.

The Chair: Thank you, Monsieur Giguère.

Mr. Opitz. Mr. Opitz is with the government and he's a Conservative.

Mr. Ted Opitz: Thank you, Mr. Chair.

Hello, and thank you for being with us today. It's fantastic. I know there's a huge time difference between us.

I'm just going to go to biometrics for a minute. Does your government collect biometric information?

Ms. Christine Hyndman: We collect some biometric information and we have the capacity in our act to collect more, but we're still in the process of implementing that because we're getting a new computer system that will be able to deal better with biometrics than the current one.

So our current act enables us, or a representative of us, to collect and use face, fingerprint, or iris biometrics from foreign nationals who are applying to enter, remain, and/or depart New Zealand, including refugee and asylum applicants.

Mr. Ted Opitz: Great. So to the limited extent you're using it now, how do you find its effectiveness?

Ms. Christine Hyndman: My understanding is that we have found it to be very useful, particularly in the determination of asylum claims. Subject to very strict controls that have been bilaterally agreed upon with our five country conference partners—Canada is one—we can do bilateral sharing of fingerprints and matching of fingerprints. My understanding is that we have had much greater hit rates than we anticipated of people who had already claimed asylum in other countries and in some situations had actually been granted asylum but had decided to move to New Zealand anyway.

Mr. Ted Opitz: Do you have an entry-exit protocol that you employ?

Ms. Christine Hyndman: Not for biometrics, but we do have very strict entry and exit controls. It's the big benefit of being a country that has such specific borders. We've maintained entry and exit controls forever, as far as I'm aware, certainly for the last few decades, and our computerized matching of the border movements, the customs information, with the immigration information goes back to about 1994.

Mr. Ted Opitz: Do you have information sharing with the Australians?

Ms. Christine Hyndman: We do share considerable information with the Australians but not strictly. We do not collect biometrics at the border, and even if we did, I don't know if we would share it. That would have to be subject to a protocol that was agreed upon by the privacy commissioners in both countries. But we do share some information with Australia.

● (1825)

Mr. Ted Opitz: Turning to human smuggling and human trafficking, what kinds of experiences do you actually have with it? You're saying nobody has landed by boat, but presumably they obviously come by plane, by other methods, and people still likely get in. Can you comment on your experiences with that?

Ms. Christine Hyndman: You're correct, of course, that it's very difficult to get good information due to the nature of smuggling and trafficking. It's one of those things that the harder you look for it, the more you tend to find.

We do in fact have a certain level of overstaying within the country. At present probably about 15,000 to 16,000 people are unlawfully in the country, and we can tell that because of the controls we exercise at entry and exit. Many of those will be people who did intend to overstay and perhaps work unlawfully but who entered often with assistance, often with the help of people who could tell them what to say and provide them with information that would enable them to pass our controls.

With regard to trafficking, as far as we can tell, we do not have high levels; nonetheless, trafficking is obviously a massive concern because the exploitation of human beings that it represents is something that no country wants to be party to.

The major ways we combat both of them are largely internationally through the Bali process and internally through the best compliance processes we can manage. We have strong penalties in our legislation now for people who aid other people to knowingly circumvent our visa controls.

That's probably the general tenor of my comment.

The Chair: I'm sorry, but unless Mr. Weston wants to yield to you, our last speaker is Mr. Weston.

Mr. John Weston: Thank you.

Mr. Dykstra, I thought you were going to take the next question.

Mr. Rick Dykstra: Go ahead.

Mr. John Weston: All right.

Let me just start by saying that it's no surprise to me that the country that produces the All Blacks can turn around refugee processing times that quickly.

Thank you for being available to us, and for being so open and transparent in your responses.

I was really intrigued by what you said about detention and that it was explicitly there as one of many aspects to deter people from coming to your shores in illegal ways.

We heard from other witnesses that it wasn't an effective thing to do, although common sense just suggests that if there are penalties there, people who know about them and fear the penalties may be inclined to go elsewhere.

Do you want to comment further on that, Ms. Hyndman?

Ms. Christine Hyndman: I would say that the overall package is intended to deter. The detention is probably not the major part of it. The major aspect is the three years of temporary status, and then the restrictions on wider family sponsorship.

I think it is true that detention in and of itself probably may be off-putting, but may not be a major deterrent to people. But with the package we very much want to remove business opportunities from people smugglers who may see them as enabling people to come to New Zealand.

Mr. John Weston: We're constantly engaged in a balancing act here. On the one side, clearly there is compassion in the hearts and the minds of New Zealanders and Canadians who want to help people who are in severe circumstances elsewhere. On the other hand, we want to make sure that security is a value that prevails in our refugee policy.

How do you see the detention part helping you deal with the security aspects of what you're trying to do?

Ms. Christine Hyndman: It is particularly focused, I think, on the security aspects. Its major focus is on enabling us to ascertain the identity of people.

One of the issues, of course, which I understand Canada has experienced, is that if you have a mass arrival, the crew, the people who are organizing and involved in the business side of it, are liable to have spent part of the journey destroying their own documents and developing stories to enable themselves to look like people who are in need of protection. So part of the identity verification aspect of the detention is being able to winnow those people out.

● (1830)

The Chair: That's it, Mr. Weston.

Ms. Hyndman and Mr. Richards, thank you very much. I hope we haven't been too tough on you. We've had some difficult questions, but we appreciate hearing something about your legislation that's being proposed.

Again, I thank you on behalf of the committee for taking the time to speak to us.

Ms. Christine Hyndman: Thank you.

The Chair: Thank you.

Before we adjourn, ladies and gentlemen, tomorrow our meeting will be from noon to 2 p.m. Ms. Sims will be the chair because I will unfortunately not be here. The second meeting will be from 3:30 to 6:30 in this room.

This meeting is adjourned.

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