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Chair

Mr. David Tilson

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● (1535)

[*English*]

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

This is the Standing Committee on Citizenship and Immigration, meeting number 37, on Wednesday, May 2, 2012.

This committee hearing is televised and is 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 a number of other acts.

The first panel is individuals. They are lawyers.

Carole Dahan, good afternoon.

Ms. Carole Dahan (Barrister and Solicitor, As an Individual): Good afternoon.

The Chair: Andrew Brouwer, we've met before. You've been here?

Mr. Andrew Brouwer (Barrister and Solicitor, As an Individual): Yes.

The Chair: I'm glad you came again.

From the embassy of Hungry, we have Imre Helyes, who is the first counsellor and head of the consular section.

Good afternoon to you, sir.

Mr. Imre Helyes (First Counsellor, Head of Consular Section, Embassy of the Republic of Hungary): It's a pleasure.

The Chair: Thank you for coming.

Normally, the practice is that each group—it would be the two of you and Mr. Helyes is by himself—has up to 10 minutes to make a presentation. You don't have to, but if you wish, you can. The two of you, Ms. Dahan, would have to split ten minutes.

Mr. Helyes, if you wish, you could say a few words. I understand you don't have a prepared text. You could tell us a joke if you wish.

Ms. Dahan, you have the floor.

Ms. Carole Dahan: Thank you. Thank you for inviting us to present before you.

My name is Carole Dahan, and I'm the director of the refugee law office at Legal Aid Ontario. This is my colleague, Andrew Brouwer, a staff lawyer at the RLO.

As I said, we're a staff office of Legal Aid Ontario, and we're a very small office; there are five lawyers and five support staff. About 50% of the work we do involves persons in detention. I have visited the immigration holding centre, the IHC, that was spoken about this morning on numerous occasions, and I concur with Janet Cleveland's assessment of it as a jail, and certainly not, as Minister Kenney has characterized it, as a hotel.

I'm not going to spend my precious minutes talking about the IHC, but if any members have further questions about the IHC or about the provincial jails where detainees are also held, we have lots of experience with those facilities and I would be happy to address that later.

In the work that our office does with detainees, we're often the last resource, the last chance for representation of the most vulnerable clients. Many of our clients have, for one reason or another, been unsuccessful in their refugee claims and are facing imminent removal. Because we are a very busy and very small office, we only take cases where there is evidence that the person is at real risk of persecution.

For example, one gentleman who found us while at the IHC had come to Canada from war-torn Chechnya and had made a refugee claim right at the airport. He was one of the lucky ones who had the presence of mind to bring a number of documents establishing his identity when he was fleeing. They were submitted to the IRB, and they in turn submitted them for what's called forensic testing, because of the prevalence of forged documents coming from that area of the world. The IRB lost the documents before they were ever forensically tested. While they accepted his Russian citizenship, they found that he was not a convention refugee because he had failed to establish his identity as a Chechnyan.

Shortly after that, he began the process of trying to get a new document, a new birth certificate. He contacted his sister, but because we were dealing with a war-torn nation at the time—his house had been bombed and been burned down—his sister had to travel to another city, to the registrar of births, to obtain a new birth certificate. In the meantime, he was served with what's called the pre-removal risk assessment, his PRRA, which he completed himself, but without this new evidence, it, too, was rejected.

The new evidence arrived 17 days after his PRRA was rejected. It was at that moment that he found us, while detained, and we were able to assist him in submitting a new, second PRRA, with the new birth certificate that conclusively proved that he was, indeed, Chechnyan. With that evidence he was found to be a convention refugee and at long last given the protection that he was seeking all along.

Why am I telling you this story? I'm telling you this story because it illustrates several issues with respect to Bill C-31.

Number one, it shows that human errors do occur.

Number two, it demonstrates that the very tight time lines, the 15 days for the basis of claim form and the 30 days and 60 days for the hearing are simply not enough time to obtain proper and supportive documentation from back home, let alone psychological assessments, which Cécile Rousseau and Janet Cleveland spoke about this morning, or even just physical medical examinations to support a claim.

Third, it demonstrates the need for a safeguard. Even when there has been a recent negative decision, when there is new and persuasive evidence that goes to the heart of the person's claim of persecution, there must be a mechanism by which evidence can be examined and evaluated. Without it we run the risk of refoulement.

Bill C-31 would have barred my client from submitting a new PRRA for one year from the date he had received his IRB decision, and he would have been sent home to face persecution.

● (1540)

To be clear, I'm not suggesting that everyone be given a further PRRA after the IRB has made a decision, but when there are exceptional circumstances and when there is new evidence, then the bar should not exist. There must be a mechanism to review this new evidence before the person is sent back.

I'm very conscious of the time, so I would also add that in the circumstances there would be no automatic stay of removal. My colleague is going to talk about that in a different context. Just as now, we would have to convince either a removal officer to defer the removal, pending the new PRRA, or we would have to convince a Federal Court judge to defer the removal pending a new PRRA. So we're not adding another layer to the process, but we are asking that the one-year bar be reconsidered.

I have some other recommendations that I'm happy to share with you later.

The Chair: Okay. Perhaps you can do that during questions.

You have about four minutes.

Mr. Andrew Brouwer: Thank you.

A mistake in the refugee determination system can cost a life or expose a fellow human being to torture, persecution, arbitrary detention, or even death, hence the absolute necessity of an effective safety net. Under Bill C-31, some refugees will have a safety net by way of an appeal to the Refugee Appeal Division and an administrative stay while they seek leave for judicial review in the Federal Court. But some won't.

While there are clearly issues with how the RAD will work and the impact of unworkable time lines combined with increased detention, the fact that there is at least a mechanism for an appeal is absolutely central, and it's what we need in Canada under the obligations we have under international law and the charter.

An effective appeal on the merits of the claim is a fundamental requirement under international law. It's something that's been recommended repeatedly by UNHCR, the Inter-American Commission on Human Rights, and many others. Bill C-31, while it maintains the RAD, will, however, deprive some groups of refugees of access to the RAD, namely nationals of countries that have been designated as safe by the minister, anyone the minister has designated as an irregular arrival, people who are admitted to Canada under an exception to the safe third country agreement, and those whose claims have been designated as manifestly unfounded by the refugee board. Not only that, but these same refugee claimants will be denied real access to the Federal Court for judicial review. That is, while they still nominally have the right to seek leave for judicial review of the Federal Court, they won't benefit from an administrative stay while the court considers whether or not to look at their case, as they do under the current system.

In most cases, if the minister is successful in speeding up the process, as he intends to, refugees who fail at the refugee board will be deported long before any Federal Court judge lays eyes on a leave application. Further, the jurisprudence of the Federal Court and the Court of Appeal is clear that once a person has been deported, a Federal Court judicial review application in respect of the risk assessment is moot. There's no point in looking at it because the person has already been deported.

This is crucial—this bit of information and this relationship between access to the RAD and access to the Federal Court—because it shows you that contrary to information that the minister has provided, and I apologize for being political, the fact is that in reality there are certain groups of refugees who will have no access to any review of the first-stage decision on their refugee claim.

With the one-year bar on the PRRA and the bar on access to H and C consideration, the reality is that there will be no effective mechanism whatsoever at law to remedy mistakes that have been made by the first decision-maker at the refugee board. That, in my submission, is contrary to fundamental international human rights law. It's also unconscionable. I think that as Canadians, all of us agree that we don't want mistakes made when it comes to refugee determination. We need to make the decision right.

Just to be clear, how much time do I have, Mr. Chair?

The Chair: Just one moment.

Mr. Helyes, do you have a presentation to make? I understood you did not.

Mr. Imre Helyes: Mr. Chair, if the witness would like to use part of my time, I would be very glad to share the time.

● (1545)

The Chair: Okay, we'll let you do that.

Mr. Andrew Brouwer: Yes, I do. Thank you very much.

The Chair: You can thank Mr. Helyes.

Carry on, Mr. Brouwer.

Mr. Andrew Brouwer: Thank you.

The House of Commons was confronted last summer with the reality of what happens when a mistake is made.

It's important to understand exactly how deportations happen in Canada. Those who are deported from Canada, particularly if they were detained prior to their removal, cannot simply slip back quietly into their country of origin and try to find a different safe place to go. To the contrary, in many cases they will be handed over directly into the hands of the authorities in their government of origin. In those cases where the government is the very agent of persecution that they've tried to flee, the consequences are obvious.

As I was starting to say, the Commons was confronted with this reality last summer, when the case of Adel Benhmuda was brought to the attention of the minister in the House. Mr. Benhmuda and his family had fled from Libya to Canada. They made a refugee claim, which was unsuccessful; did a pre-removal risk assessment, which was unsuccessful; had some kids; and then the whole family was deported back to Libya. This was before the recent regime change in Libya.

When they were put on the plane, their passports were handed over to the flight crew. This is standard procedure for Canada. I don't know about other countries. So their passports were handed over and they were deported to Tripoli. On arrival in Tripoli, their passports, in an envelope, were handed over to the security service of Libya.

Understandably, and entirely predictably, the family was detained. The spouse and kids were freed, but Adel was detained and tortured and interrogated for months, simply because he had been deported from Canada and it was presumed that he must have made an asylum claim here. It was presumed that he was therefore an opponent to the regime. His story has been verified by UNHCR after extensive interviews.

He's not the only one. A number of years ago, some members of this committee may remember there was the case of Kevin Yourdkhani and his family. They were Iranians. They too had come from Iran to make a refugee claim. They failed, they were deported, and their documents were handed over, again, to the flight crew.

On arrival in Tehran, Iran, their documents were given to the authorities there. Both Majid and Mosomeh, husband and wife, were detained and tortured and abused for months—again, interrogated because they had made an asylum claim in Canada.

The issues we're talking about here...and I'm sure the House knows this, but I think it's important to have some real-life examples in front of you of just what the implications are of a mistake.

The Chair: Sir, we're now up to 13 minutes.

Mr. Andrew Brouwer: Okay.

We can't afford to make mistakes. When it comes to refugee status determination, we have to make sure that we have at least one solid mechanism to make sure there's a remedy for that mistake. Bill C-31, as it stands, does not provide that for many categories of refugees.

Thank you very much.

The Chair: Thank you, sir.

Ms. Dahan, if you have more comments to make, perhaps that can be done when questions are asked of you.

Ms. Carole Dahan: Thank you.

The Chair: Mr. Helyes, thank you for coming. It's an honour that you would come to tell us a little bit about what you know—maybe you know a lot—about Hungarian immigration and perhaps EU immigration.

I don't know whether you have any preliminary comments or whether you just want to open it up for questions, but the floor is yours.

Thank you for coming.

Mr. Imre Helyes: Thank you very much.

First of all, I would like to apologize because I have not had enough time to prepare for a proper presentation as such. Our office was closed yesterday, so we basically received the invitation today. It was a very short notice.

Nevertheless, our embassy considers this invitation an honour, on one hand. On the other hand, it's an obligation and a responsibility to attend a meeting to which we've been invited, the same way as our government and our embassy in Ottawa have had such a responsible approach to the question and to the situation that had been bothering the bilateral relations between our two countries, Canada and Hungary.

Bothering, why? Because it seems that the high number of refugee claimants coming from Hungary to Canada is kind of a weird situation, on the one hand. On the other hand, there is no doubt that such a situation creates tension in relation to immigration questions and all kinds of situations that are definitely not facilitating the kind of smooth relationship we would like to have, based on shared values and objectives, so that our citizens would have had the mutual freedom of getting in contact with each other, knowing each other better, and so facilitating the better development of the overall relationship between our two countries and transatlantic society.

From that point of view, it has been the consideration of the Hungarian government to take responsibility for such a situation, on two sides—on the one hand, at home, which is the major task and the major responsibility, but on the other hand, also to cooperate, to provide help, or to provide assistance to the Canadian government in order to ease situations and tensions that might arise along the way.

It is that common responsibility in the face of such a situation that has brought me as a representative of the embassy of Hungary to the floor, and it puts me at your disposal. When you have questions, I will try to do my best to answer those questions.

Thank you very much.

● (1550)

The Chair: Thank you, sir.

I know there's a large Hungarian population in this country, and we do appreciate your coming. I'm sure there will be some questions of you from the committee.

Please go ahead, Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): In fact, Mr. Chair, I think I'll do just that and turn to Mr. Helyes to ask him some questions.

I appreciate the fact that we've been at this into our third day now. There's certainly some repetition in terms of the concerns folks have. It's helpful when we get specific recommendations in terms of how to improve the bill. Not nearly as helpful is when the only recommendation we receive is to withdraw the bill. Nonetheless, we will continue to meet and move forward, and try to put forward a bill that makes sense to all Canadians and to those coming to this country to become Canadians.

Mr. Helyes, one of the issues we face is a significant number of Hungarians coming to Canada to claim refugee status for a period of time. Between 95% and 98% of their claims are either withdrawn or abandoned even before they have a chance to sit down at the IRB.

I appreciate your being here today. I just want to ask some fairly direct questions about how you believe your country is trying to resolve this issue in terms of your relationship with Canada.

Mr. Imre Helyes: Thank you very much for the question. It's going to be very difficult to give a very short answer on resolving this issue. The issue is very complex, and it requires a complex approach to consider it and then to provide some kind of solution to it.

First of all, as I stated in my very brief remarks, possibly there are two considerations to take into account. One is why this phenomenon is coming from Hungary, on the one hand. On the other hand, if it is coming, why is it coming to Canada?

So there are push and pull factors. What are the push factors and what are the pull factors? On one hand, concerning the push factors, it's interesting in general that you will not see this phenomenon in relation to any other country. It is just in relation to Canada. There might be some push factors, there is no doubt about it. It's the socio-economic situation. There are a considerable number of Hungarians who are in difficult economic situations as a result of not just the latest hardships inflicted by the international financial and economic crisis, but as a prolonged consequence of the economic changes that took place after the political changes in the 1990s.

All these have combined to produce a difficult situation for many. Some of them, there is no doubt, are trying to find a better way of life, and I think that's an absolutely acceptable aspiration for anybody to have. As in Canada, in Hungary everyone has the freedom to leave the country for any reason. It's private. There is no need to explain it, and if someone wants to establish a better life and find a better life somewhere else, no problem, he can do it.

I think when it comes to aspirations to establish better conditions for life, it is an acceptable and appreciated way of improving one's life and one's family's life. From that point of view, there are several persons who wanted to leave Hungary and they did it the right way. By “the right way”, I mean immigrating to Canada, staying in line, applying for the necessary visa or application, and coming here to establish a new life. It seems to us—by “us” I mean the embassy—on the basis of those proofs and facts that the embassy has encountered over the last three or four years, as we have had contacts and have been contacted by many persons, that the great majority of those people who are coming here as refugees seem to have aspirations to improve their lives and life possibilities for the future.

● (1555)

Mr. Rick Dykstra: That may be true for a very small percentage of those thousands of people who are coming here to claim refugee status. It's clear that a great number of them, it would seem, are taking advantage of our system here in Canada, in terms of what they can avail themselves of financially, and prior to the hearing date, they end up travelling back to their country of origin.

So I come back to my question. What is Hungary doing itself to address this issue in terms of ensuring that those who are coming to Canada are doing so to visit or—as you are recommending and as I support—to seek a temporary work visa, or to potentially become permanent residents here in Canada?

Mr. Imre Helyes: Mr. Dykstra, as a matter of fact, the Hungarian government has been trying to establish programs, very complex socio-economic, educational, and public health programs, which in the long run—and I must emphasize in the long run, because it's a complex situation and there is no way to mend it from one day to another, or from one year to another, but to have a complex approach to this issue, to begin to address these issues by establishing, first of all, the national social inclusion program, which has socio-economic components, educational and public health components, and also a component that—

The Chair: Sir, your time has expired, but you're interesting. Maybe you could wind it up.

Mr. Imre Helyes: —contemplates the implementation of the program, and also a part where society as such is being treated to become aware of this complex problem.

These are mainly the push factors, on the one hand, how the Hungarian government tries to improve living conditions for Hungarian citizens. On the other hand, we must speak also about the pull factors, which exist here in Canada, to attract those who would not necessarily go the right way, but rather to emphasize certain advantages of a program, which otherwise would be provided to persons in dire situations.

● (1600)

The Chair: Thank you.

Ms. Sims.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Thank you very much, and thank you to all three of you for coming and taking the time to make your presentations.

Ms. Dahan, I know you're with Legal Aid Ontario, and I know the budgets are being cut or have been cut considerably.

Under this new refugee claim system, there is probably going to be a need for more legal representation, not only at the hearing before the Refugee Protection Division, but also before the Refugee Appeal Division.

How will Legal Aid Ontario address this problem of a decreasing budget and refugees' greater need for competent legal representation?

Ms. Carole Dahan: Thank you. That's a very good question, and it's a question legal aid is still struggling with.

I am here today speaking as an individual and not representing legal aid, but I can tell you the federal government has just announced that the funding to all legal aid plans across Canada will remain the same as last year's level, which was just over $11 million. We certainly expect from Legal Aid Ontario's perspective...Ontario receives 60% of all refugee claims in Canada, so we do both a merit screening as well as a financial screening.

Just to give you an illustration, to qualify financially for legal aid assistance, a single person has to earn $10,800 a year. If you earn $12,000 a year, so $1,000 a month, which would qualify as working poor, you do not qualify for our services.

For two people, I think it's $13,450, just under $13,500 for two people, if the husband and wife were to come and make a claim for refugee status. To be covered you would have to earn less than that, so that's the first financial eligibility.

The next hurdle to obtaining legal aid is that there's a merit screening. Legal aid has to decide whether it warrants the expenditure of public funds, because we also have obligations to Canadian taxpayers, and we have a responsibility to use the moneys we receive from the government effectively and efficiently. The first part of that is to do a merit screening.

Now, although we've been told our budget is going to remain the same, we're going to be asked to do more. As you alluded to, there's an additional layer in this process, the Refugee Appeal Division, which did not exist previously and which we have not been given any new funding for. It means that legal aid is going to have to do a lot more and be a lot more creative in the delivery of services using the same amount of money.

Ms. Jinny Jogindera Sims: Thank you very much.

If the basis of claim form has to be delivered to the Immigration and Refugee Board within 15 days, how will Legal Aid Ontario respond to that requirement?

Ms. Carole Dahan: As I was saying, not only do we do the financial eligibility and testing, but we also do the merit screening. Fifteen days for the basis of claim is going to make it extremely difficult for legal aid to do its job in ensuring that we are distributing moneys and funding those applicants who deserve it the most, and who, as I said, warrant the expenditure of public funds. Fifteen days is going to make it extremely difficult, if not impossible, for legal aid to continue delivering the services as it presently does. And it's 15 days not only from a legal aid perspective, but in terms of finding counsel even after legal aid has issued a certificate, which enables representation by the private bar. There are many, many hurdles that present themselves, in terms of finding a lawyer who's going to be available at the time, finding interpreters who can assist you.

So one of the recommendations is that the basis of claim form be extended to either the 28 days that claimants presently have in terms of filing their personal information forms, their PIFs, or be rounded out to 30 days.

Being here this morning and hearing Mr. Weston's comments about wanting to maintain the integrity of the system...nobody wants an average refugee claim taking 21 months. That's not good for my clients, it's not good for legal aid, it's not good for anyone. It's not good as Canadians. We want the system to be more fair and more efficient. We want it to be faster. I think echoing Mr. Goldman's comments this morning on throwing out the baby with the bathwater, I don't think an additional two weeks or 15 days to get the basis of claim form to be submitted is really going to delay the process that much. But in terms of making it workable and doable for all stakeholders and for all members who are involved in the process, it will make an enormous difference.

● (1605)

Ms. Jinny Jogindera Sims: Thank you. I'm sorry to rush you. We just have such a short time.

My next question is for Mr. Brouwer. What are some of the consequences of removing the checks and balances in place in the form of appeals for certain categories of refugees under this new bill?

Mr. Andrew Brouwer: Very practically speaking, we regularly see errors made by the refugee board, problems in representation by previous counsel or by consultants. When they come to us, people are at the very end of the line. They're detained and they're about to be removed, and it's the first time they're getting a lawyer to look over their case and determine that they're actually at risk.

The system we have right now allows at least some access to the Federal Court in certain circumstances, access to a pre-removal risk assessment to raise new evidence, and that's all. That's all we have right now. We also have, in certain circumstances, a humanitarian and compassionate remedy, although that's something that only works in a few kinds of cases, for example, when the best interests of the child are at stake.

Under Bill C-31, none of that is there. So by the time these people come to us, under Bill C-31, there will be little or nothing we can do for them, despite the fact that the evidence demonstrates that they're at risk when they go back.

The Chair: Thank you.

We're almost at eight minutes. I'm sorry.

Ms. Jinny Jogindera Sims: Thank you.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Mr. Chair, I have many opinions, whether it's mandatory detentions, the number of days for preparation.

Ms. Dahan, you said you had some recommendations that you would like to give the committee. Go ahead and tell us. You have up to five minutes to give your recommendations.

Ms. Carole Dahan: I think we'll split the time because we have different recommendations.

In respect of the basis of claim form, I think the 15 days are untenable and unworkable. The same 15 days are also untenable and unworkable for the RAD.

Right now in the Federal Court we have 15 days to file the notice and then a further 30 days to perfect our record. Now we're going to be asked to do basically the same thing, which is obtain the CD of the hearing, somehow transcribe it, identify the errors, meet with the clients, and then prepare a record identifying the errors for the Refugee Appeal Division. All of that we're going to have to do within 15 days—on top of getting legal aid, having legal aid do a merit screening, and finding counsel. It's simply untenable. It's unworkable. As it stands today, it's simply window dressing. I don't think it's going to help refugees in any substantive way.

Looking at recommendations, one of the basic recommendations would be to extend the time. The Federal Court gives us 45 days to perfect the record. I think that's a reasonable amount of time. In respect of the hearing dates themselves, 30 days and 60 days, that's simply not enough time.

Mr. Goldman alluded to it in his testimony today. There was a time when the board was able to hold hearings within four to six months on a routine basis. It was only after the backlog that it went up to an average of 21 months. Our office routinely got called to schedule hearing dates within that timeframe, so we know it's doable. We know it can be done, and we know a fair and reliable system is achievable. It is an achievable goal. I don't think Bill C-31 gets us any further.

● (1610)

Mr. Andrew Brouwer: As to specific timelines, I don't know whether you said this, but we've talked about 28 days for the basis of claim, 120 days for access for the hearing, and 45 days, the same as we have currently in Federal Court, to perfect an appeal.

I think we both agree there needs to be, as there is now, a stay pending a leave application in the Federal Court. There should be no deportation of a failed refugee claimant until the Federal Court has looked at whether or not there's an arguable case. It's a difficult standard to meet, practically speaking, but they should at least have that shot. There should be no refugee denied access to the appeal division. If we're going to have an appeal, everyone should have access to the appeal, otherwise it's not an appeal.

It's our position that there has to be an opportunity to raise a new risk, or new evidence, or new circumstances prior to deportation. That means access to a PRRA prior to removal, after the RAD or the RPD has dismissed a claim. It may not be that there's a PRRA for everybody, but where someone can raise a prima facie risk, and he can show there is something that's changed, he should have that risk reviewed prior to deportation. Failure to do that, we believe, is contrary to the charter's section 7, and is contrary to both the convention against torture and the covenant on civil and political rights, not to mention the refugee convention.

We have many other things we could recommend about detention.

Ms. Carole Dahan: On detention, Mr. Opitz said this morning that we detain people until their identity is established. That is true today. That is true of the present system. Under Bill C-31, if the group is designated, then they would not be released, even after their identity is established. That is a very significant change.

One of the recommendations would be to eliminate, for designated groups, the one-year bar to having a detention review, and to preserve the opportunity to go before an adjudicator, a member of the immigration division, every 30 days.

We are concerned about identity and about security of Canadians, but once those thresholds have been met, then prospective immigrants should be given the opportunity to present themselves before the ID and have an opportunity to be released. So that would be another change.

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Mr. Chair.

I want to ask Imre some more questions. I only have seven minutes. We each have seven minutes for the first round and five minutes for the next, so it really requires some cooperation between the two of us to really nail down our answers and our questions so that we can at least build a little bit of a base here. I'd be happy to meet with you after. Obviously this is a great introduction. I'd be happy to sit down with you further, but it's important that we sort of drill down.

I wanted to ask you fairly directly...the fact is that there are a number of other countries. If indeed any of the thousands of individual Hungarians who come to Canada and claim refugee status and then go back to Hungary were truly in need of refugee assistance, they could do so in one of the other countries that surround you or that are within the EU, as they're able to transfer without any difficulty to those other 34 countries. I wonder why they are not doing that. I suspect that—and what I want to hear from you—our process and our program with respect to our refugee act is actually so easy for folks in Hungary to take advantage of that it has led them to do what they're doing.

● (1615)

Mr. Imre Helyes: Yes, Hungary is one of the member states of the European Union. As a consequence, all Hungarians citizens are considered EU citizens as well. As such, they are entitled to move freely around in the space of the European Union, and basically there is no restriction concerning employment; there is no restriction in any of the EU countries concerning establishing residence. So any Hungarian citizen can do it and can move, whether it's just to improve their life perspective or for any other consideration.

I think on the basis of our limited experience with Hungarian refugee claimants, we have noticed that the absolute majority of them have been enticed, I'm sorry to say...

Mr. Rick Dykstra: Go ahead, say it.

Mr. Imre Helyes: ...by easy money, which can be obtained within the very generous framework of the Canadian refugee system. It does not mean, to my mind, that anyone would not be provided with the same scope of support from a social point of view or from a welfare point of view. Maybe the same scope of welfare could be preserved but be provided and given in a different form, not in such a liquid form that can be translated easily, even geographically, from Canada to other parts...but rather as services provided, in-kind services, etc.

Mr. Rick Dykstra: So it's worth the trip to come to Canada from Hungary because there's easy money on the table and our system currently is broken and we need to fix it. You would agree?

Mr. Imre Helyes: Yes. I would probably not have other options, just to go that way.

Mr. Rick Dykstra: What can you tell me about, in comparison, which you just alluded to...? Why are the social benefits more attractive here in Canada, and applying for refugee status here, having to wait up to 12 months for a hearing...? Why are our social benefits, do you believe, that much better here than in Hungary? Is there an aspect here that we're missing, something that we should be paying attention to that Hungary isn't doing in terms of social services?

Mr. Imre Helyes: I do not think that when it comes to providing social services as such there would be a big difference. The difference, there is no doubt about it, is in the general scope of the services or the level of the possibilities to provide those services. There is no doubt that the economic development of Hungary is not that of Canada; therefore, the Hungarian social welfare system cannot be as generous with anyone, including, obviously, and first of all, with its own citizens. Unfortunately, it's not in a situation and a position to provide that scope and that level of social services.

For example—it's very interesting—when it comes to the refugee system, Hungary is part, obviously, of the Geneva Convention and as such is providing refugee protection to those who are coming to Hungary seeking protection and who are entitled to it. We have noticed a similar phenomenon in relation to those countries that have a much lower level of general development in comparison with Hungary. Yes, there are persons from certain countries who are coming to Hungary seeking refugee protection, more or less on the same basis as sometimes Hungarians are coming here to do it in Canada.

Mr. Rick Dykstra: One of the issues we keep coming back to is the Roma population, and that seems to be a group that is coming to Canada. I wanted to give you the rest of the time you have to address that issue.

What are you doing for the Roma community in Hungary?

Mr. Imre Helyes: As I have already begun to explain, the government is considering this situation in general terms when it comes to a certain layer of the population that is in difficult social and economic conditions. But within that, there is a specific unit or a specific component, which is the Roma population, which would definitely be in a more difficult situation. Part of the program is specifically directed toward the Roma population, not just in general but specifically targeting those specific problems that the Roma population are encountering in Hungary.

We must be very much aware of the fact that these are complex problems, and therefore that program, which the Hungarian government has proposed not so recently, needs time to be developed and to bring fruit. The approach is complex and concerns all layers of the problem. Therefore, it is very possible and we expect that in the medium term it will bring the fruit that we would like to have.

● (1620)

The Chair: Thank you.

Madame Groguhé, it's your turn.

[*Translation*]

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

Thank you to the witnesses for joining us.

Mr. Brouwer, could you share your comments and concerns with us regarding the process described in this bill as to the designation of safe countries?

[*English*]

Mr. Andrew Brouwer: Thank you you for that question.

We have a range of concerns relating to the designation of countries of safety. It's our first position that it's never appropriate to designate a particular country as safe. Refugees may come from any country in the world, and the reality is that conditions change quickly in countries around the world, so a country that was safe may overnight become very unsafe. The result of the designation is that those people will be denied access to the kinds of protection that Canada should be providing.

In terms of some of the changes that have been proposed in Bill C-31, even as compared to Bill C-11 the last time around...at least the last time around there was to be an advisory committee that included outside advice on which countries were or weren't safe and should or shouldn't be designated. The minister has taken out any access for external advice and turned it into a completely insulated government decision, and we have huge concerns about that.

Beyond that, UNHCR has commented about the designation of countries. My understanding about their position is that they have said that in certain circumstances it may not be inappropriate to accelerate claims from some countries, but even the UNHCR has consistently said that an appeal has to be there even if you're going to designate a country. Bill C-31 takes that appeal away, and, as I mentioned earlier, not only does it take that appeal away, but there is also no real access to Federal Court for people from designated countries.

We're also concerned about the changes at the IRB, about the fact that decision-makers at the Refugee Protection Division now will be civil servants, not people who are put there for a fixed term with some degree of independence. They are now going to be the only people hearing claims from people from countries that their boss has designated as safe. We have concerns about how that is going to be impacting their ability to make impartial decisions on refugee claims before them.

[*Translation*]

Mrs. Sadia Groguhé: Thank you.

Ms. Dahan, what do your clients say about their permanent resident status being potentially revoked?

[*English*]

Ms. Carole Dahan: That's a good question. I know there has been, or will be, other groups speaking specifically about clause 19 and the changes to clause 19, but as it stands right now, I think it would put fear in almost every single refugee and immigrant community throughout Canada.

Mr. Opitz, you referred to having served in Bosnia earlier in your life, so we'll take the example of a Bosnian refugee who comes to Canada, was found to be a convention refugee, and who now, under the provisions, because of the change of circumstances in Bosnia, could be stripped of both refugee protection and her permanent residence simultaneously and sent back there, because it's safe there now.

Many people, for a variety of reasons, don't take out citizenship when they are eligible for citizenship. They would suffer under these provisions and they would be at risk under these provisions. I think it sends a wrong message to immigrants and refugees throughout the country.

● (1625)

The Chair: Quickly.

[*Translation*]

Mrs. Sadia Groguhé: Could you quickly describe the impact of a five-year wait for a family to be reunited after settling in Canada?

[*English*]

Ms. Carole Dahan: I apologize to the interpreters for speaking so fast.

On the impact, we've heard already on the study that Ms. Cleveland and Cécile Rousseau spoke about earlier today about the separation of children. I can tell you personally, if I were faced with the idea that I could be separated from my child for five years, potentially even eight years—because it's a year to get the refugee status, five years afterwards...after that I have to apply for permanent residence and then apply to sponsor my child. It's going to lead people to make very foolish decisions and to bring their children with them on very dangerous voyages.

If the idea is to stop human smuggling and to get people not to use the smugglers, I think the smugglers are going to be the ones who win. Rather than getting one client who thinks, "I'm going to go to make a claim and then I will sponsor my child and reunite with my child", if faced with the possibility of being separated for five to seven years—10 years—I'm going to bring my child with me. The smuggler has just won because now they have two clients.

I don't think this targeting of families and the separation is going to assist us in any way.

The Chair: Some of you are looking at the clock back there. It has stopped, so the immigration committee is stuck in time.

Voices: Oh, oh!

The Chair: Mr. Opitz, you have time for one quick question.

Mr. Ted Opitz (Etobicoke Centre, CPC): Thank you, everybody, for appearing.

Szervusz, Mr. Helyes. It's nice to have you here.

Sir, you were talking about some of the issues around the Roma in particular. Just to put it on the record, does Hungary discriminate against the Roma?

Mr. Imre Helyes: No.

Mr. Ted Opitz: What protections are in place for them under your system?

Mr. Imre Helyes: I'm sorry. You mean protection in what sense?

Mr. Ted Opitz: You described that there are complex and multiple problems with this group and some others in your country. That's a nice global statement, but I'm trying to get some specifics. In dealing with those problems, how does your country protect them internally?

Mr. Imre Helyes: Concerning discrimination, the law does not allow any kind of discrimination. In case there is discrimination, the law provides remedies in different forms.

Second, there is an institution for the protection of minority rights, or the institution of an ombudsman for minority rights, which follows the general flow of events in society. It has the opportunity to have a close look at the activity of any particular state agent or institution concerning the particular question of discrimination.

The government has been following very closely the development of different kinds of situations, and in accordance with the needs, it has been amending, for example, the criminal code, where new institutions of crimes are established, addressing particular phenomena. For example, it comes to the monopoly of the state to implement coercion, which in certain forms would have been challenged by certain formations. We now have not only the general disposition but a particular legal disposition to fight that kind of phenomena, and that definitely has disappeared during the last one and a half years. It would have been present during a certain period of time when the law would not have provided that particularly clear instrument for the state to go forward and fight that kind of phenomena.

● (1630)

Mr. Ted Opitz: Are you satisfied—

The Chair: I'm sorry, we're way over on everything today.

Mr. Helyes, as I said earlier, it's been an honour that you would come representing Hungary and giving your views on immigration. Thank you very much.

Ms. Dahan, I always admire someone from legal aid. I don't know how you make a living at it, but thank you for coming. And, Mr. Brouwer, it's good to see you again.

We thank the three of you very much for coming.

We will suspend.

● (1630)

(Pause)

● (1635)

The Chair: We will start panel two. We're a little bit behind.

We have two witnesses. Professor James Milner is with the Department of Political Science at Carleton University. Good afternoon to you, sir.

Professor James Milner (Assistant Professor, Department of Political Science, Carleton University, As an Individual): Thank you.

The Chair: Have you been here before?

Prof. James Milner: I have not.

The Chair: You must have done something famous, because your name sounds familiar. Have you written a book, maybe?

Prof. James Milner: I have.

The Chair: There you are. I probably haven't read it.

Prof. James Milner: I don't have it for sale at the back.

The Chair: Okay.

We also have Chantal Desloges. Good afternoon. You are a lawyer.

Ms. Chantal Desloges (Senior Lawyer, Chantal Desloges Professional Corporation): Yes.

The Chair: You each have up to 10 minutes to make a presentation.

Professor Milner, you can go first.

Prof. James Milner: Thank you, Mr. Chair. I am very grateful for the committee's invitation and for this opportunity to appear before you today.

While Bill C-31 would affect Canada's domestic refugee system, my presentation today considers the implications of Bill C-31 for Canada's international refugee policy.

The current strategic outcomes and program activity architecture for Citizenship and Immigration Canada specifies that CIC, along with its partners within the Canadian government, aims to influence the international refugee policy agenda by participating in a range of multilateral, regional, and bilateral forums. In fact, CIC, working with CIDA and DFAIT, has had considerable success in pursuing this objective and especially in demonstrating international leadership and influencing the international approach to the issue of protracted refugee situations, which is a topic I will speak about in just a moment.

My concern with Bill C-31 is that it contains three elements that would likely undermine Canada's ability to pursue this objective, as they could have a negative effect on Canada's ability to influence its position within the global refugee regime. These three elements are ministerial authority and the designation of safe countries of origin, the use of detention in response to irregular arrivals, and provisions for the revocation of permanent residence status, especially for refugees who have been resettled to Canada.

My commentary on Bill C-31 today is informed by the findings of a research project I have co-directed at the University of Oxford for more than 10 years. The project has examined the politics of the global refugee regime and how certain states, like Canada, are able to promote an agenda that is focused on solutions for refugees. This research has found that Canada has been quite successful in influencing refugee policy at both an international and a regional level. I would be happy to provide some examples of these successes in the question time. I won't get into them now, in the interest of time.

Our research has indicated that Canada's ability to play this leadership role is primarily a result of its moral authority, its demonstrated commitment to multilateral cooperation, and the reputation it has for a fair and impartial domestic asylum process. In contrast, we have found that countries that adopt restrictive legislation, especially legislation that includes provisions for mandatory detention and measures explicitly intended to deter the arrival of asylum seekers, lose their ability to influence the global refugee regime, especially when it comes to negotiating with refugee-hosting states in the global south.

In the interest of time, I would like to provide some background on the global context before I focus my comments on these three elements of concern and suggest amendments for the committee's consideration.

The past 20 years have witnessed an important shift in the global refugee system. One of the manifestations of this shift is the rise in so-called protracted refugee situations. These are situations were refugees spend a minimum of five years in exile without a durable solution to their plight. Some two-thirds of refugees in the world today—that's 7.2 million refugees—are in a situation of prolonged exile, and 80% of these refugees remain in their region of origin. In fact, some of the largest refugee hosting states in the world today are countries such as Pakistan and Kenya. These are countries that face many of their own challenges with stability and development.

Many of these hosting countries respond to the mass arrival and prolonged presence of refugees by requiring refugees to remain in refugee camps. These camps are frequently very isolated and very insecure places, where refugees do not enjoy the freedoms and rights afforded to them under the 1951 convention, such as freedom of movement and the right to seek employment.

While the precarious condition of refugees in these camps is problematic, perhaps more alarming is our demonstrated inability to find solutions to protracted refugee situations. In 1993 it took an average of nine years to resolve a refugee situation. Today it takes closer to 20 years to resolve a refugee situation.

Canada has identified the resolution of protracted refugee situations as an international priority. Through its statements to the UNHCR's executive committee and to the UN General Assembly, Canada has called for international action to address these situations and make solutions for refugees more predictable. This priority has been echoed in CIC's own strategic outcomes and program activity architecture, specifically, strategic outcome 2, program activity 4.

Canada has primarily used mechanisms to advance this priority of helping to resolve refugee situations.

● (1640)

The first is refugee resettlement. The government should be congratulated for announcing that Canada will resettle as many as 14,500 refugees a year. This would confirm Canada as the second largest refugee resettlement country in the world.

It would, however, be problematic to conclude that protracted refugee situations can be resolved through resettlement alone. The current global total of resettlement opportunities is about 80,000 opportunities a year. With 7.2 million refugees eligible for resettlement, it would take 98 years to resolve protracted refugee situations through resettlement alone. This is why Canada uses diplomatic engagement in combination with resettlement to play a leading role in resolving protracted refugee situations.

Based on Canada's moral authority in the global refugee regime, it has been able to lead negotiations internationally and at a regional level to move protracted refugee situations towards their resolution through a combination of resettlement, repatriation, and local integration. I would argue that this is a very cost-effective way to strengthen the global institution of asylum and to seek solutions for specific refugee situations.

As I have mentioned, Canada has been able to play this role because it has moral authority in the global refugee regime. It has a demonstrated commitment to multilateral cooperation, and it has a reputation for a fair and impartial domestic asylum process. In stark contrast, other states in the industrialized global north, especially some European states and Australia, have been seen to lose influence and moral authority in the global refugee regime as a result of the adoption of more restrictive asylum policies at home. Again, in the interests of time, I won't go into these examples of how this happens, but I'd be happy to talk about that during the question time.

Given the importance of Canada's moral authority in pursuing its interests within the global refugee regime, and given the role that changes in domestic policy and practice have had on the moral authority of other states within the regime, I submit that it is important to consider the international implications of Bill C-31. There are three elements of Bill C-31 that would likely undermine Canada's moral authority within the global refugee regime.

My first concern relates to ministerial authority and the designation of safe countries of origin. Negotiations with host states in the global south on refugee policy frequently include considerations of the importance of depoliticizing refugee issues and the value of transparent and bureaucratic decision-making mechanisms when responding to the arrival of asylum seekers, either through individual or mass arrivals. Canada's ability to make this argument with host states in the global south would be undermined by the provisions of the bill that give the Minister of Citizenship and Immigration discretionary power to designate certain countries of origin as safe.

I therefore recommend that the bill be amended to mandate an independent advisory panel of experts the task of compiling and maintaining this list of safe countries of origin.

My second concern relates to the use of detention in response to irregular arrivals and designated foreign nationals. The use of mandatory detention as a deterrent against the arrival of future asylum seekers has not only been demonstrated to be ineffective and extraordinarily expensive, especially in the case of Australia, this provision has been a central feature of the restrictive asylum policies in the global north that states in the global south have identified as a justification for limiting the range of rights they afford to asylum seekers and refugees on their territory. Canada's ability to encourage host states in the global south to move away from the encampment of asylum seekers and refugees and the provision of greater freedom of movement would be undermined by the detention provisions detailed in the bill.

I would therefore recommend that Bill C-31 should be amended to remove reference to the mandatory detention of irregular arrivals and designated foreign nations.

My third and final concern, and I'm moving to my conclusion here, relates to the provision of the revocation of permanent resident status. A central priority for Canada's engagement with the global refugee regime has been to encourage every opportunity for refugees to secure a permanent and durable solution to their plight. Canada's ability to make this argument internationally would be significantly limited if Bill C-31 contained provisions through which refugees who have been resettled to Canada and granted permanent residence could have this legal status revoked, except in cases where it is demonstrated that the application for resettlement was obtained through a fraudulent claim, and here I would refer to Professor Audrey Macklin's testimony earlier on, vacation versus cessation—

● (1645)

The Chair: We're almost out of time, sir.

Prof. James Milner: I would therefore recommend that the bill be amended to remove reference to the revocation of permanent residence for resettled refugees.

With that, I say thank you, and I look forward to your questions.

The Chair: Thank you very much.

Ms. Desloges.

Ms. Chantal Desloges: Thank you.

I'm an immigration and refugee lawyer. I've been practising exclusively in the area of immigration and refugee law for about 13 years.

I'm a certified specialist in both immigration law and in refugee law. I'm one of only about a dozen people to hold both specialist designations from the Law Society of Upper Canada.

I say that not only to let you know that I know what I'm talking about, but also to reinforce the fact that I'm a bit of a rare animal, in the sense that I understand both the refugee side of our immigration policy as well as the economic side of immigration, which I think is somewhere I can add value to your committee.

I'm a Canadian first; I'm a lawyer second, in that order.

I believe that our Canadian immigration policies are for the benefit of Canadians, and not primarily to benefit the rest of the world. Having said that, I do see positive benefits for Canada upholding our humanitarian values and our obligations under international law, but within reason.

I think there is such a thing as being so open minded that your brain falls out sometimes.

I strongly support a lot of the measures that the current government has taken over the past few years with respect to immigration reform—not all of them necessarily, but the majority of them I have agreed with. There does come a time, however, when you need to give a little tough love when one sees certain initiatives that you cannot uphold in good conscience. Think of me as the friend who grabs you back from the curb as you're just about to step into traffic. That's how I feel.

I have only 10 minutes, and I'm mindful of the fact that many colleagues who are much more learned than I am have spoken before me. I am going to focus on just four very quick issues, and I'll leave the rest of the time for questions.

I have prepared a PowerPoint, which is meant to complement what I'm saying, not be a substitute. I'm not going to read from the slides, so you're going to have to do a little work: you're going to have to read and you're going to have to listen to me at the same time.

The first issue is the use of the designated country of origin list.

For the record, I do disagree with a lot of my colleagues in the refugee bar who unilaterally oppose the use of any designated country of origin list. I think there is room for a designated country of origin list, if it's used in the right way.

Keep in mind that even with a DCO list, claimants will still be able to make their refugee claim. They will still have their day in court, but some of the other checks and balances, such as right of appeal and things, will be restricted for them. I think that system probably would be constitutional, if it's properly applied.

Frankly, I think it does make us look a little ridiculous if we're giving all the checks and balances to people who could be making a claim, for example, from the United States. I think that damages our credibility.

Where I do have a concern about the DCO list is in the decision-making procedure for who gets on this list. That's a deep concern to me. I should say that I think it's pretty obvious to everyone in the room that this DCO list was designed to address a specific situation with two countries, and let's be honest and name them, Hungary and Mexico. Everybody knows it. Maybe people don't say it so explicitly, but it's well known. I think that reacting to a specific negative situation is not the best way to make policy. You risk throwing the baby out with the bathwater.

I have major concerns that concentrating the power of the DCO list only within the ministry and not consulting a panel of experts is wrong, because it opens the system to major political influence.

In the previous incarnation of this bill, the DCO list was decided by a panel of experts, and as a professional, I would be comfortable with that. However, leaving that decision to the sole discretion of the ministry is not a good idea.

The second issue is the proposal to permit permanent resident status to be removed from refugees who cease to be refugees. I differ a little from my friend who has just spoken on this. I think that proposal is supportable. First, it allows us to extend protection when it is needed and still uphold our international humanitarian and international law commitments. At the same time, it reserves us a little extra tool in our tool kit to get rid of people who may be undesirable and who are no longer in need of our protection. I find that a reasonable compromise

. I think we have to keep a broader perspective in mind that anyone who is declared to be a refugee after a couple of years will also be able to apply for citizenship, and after getting citizenship, they will have the right to remain in Canada permanently.

● (1650)

The minister will still have to show to the refugee board why this person has ceased to be a refugee. I think that is a reasonable protection that is put in place to make sure it's not misused against people who really do deserve that protection to be extended. Because the cessation process is complex and time consuming and it requires effort, I don't think it would be used lightly. I don't think it would be used that often. So that does quell my concern a little bit for those people who have said it would leave people feeling fearful of having their refugee status revoked at any time because of a change of country conditions. I just don't think, practically speaking, that's the way it would work out.

A third issue is the accelerated timeline for filing the basis of claim document and for having your hearing before the refugee board and the Refugee Appeal Division. I strongly support any move that would accelerate timelines for refugee claims. That's pretty much universal. I can't think of any of my colleagues who would disagree that making things faster is a good idea. However, this 15 days, 30 days, 60 days, etc., is just completely unworkable. I'm telling you as an expert who has worked a lot in this system that it is set up to fail. It is impossible to work with. It's not only a problem for the claimant, it's not only a problem for the lawyer, but I can't even imagine what kind of a nightmare this will be for the Immigration and Refugee Board to have to make decisions within that kind of a framework. I don't know who in the department thought it would work, but I can assure you it will not work. Shortened timelines definitely are a good idea, but this kind of a shortened, accelerated timeline is just too much. It cannot work.

As far as I know, there is no new money going to the board. They're already having a hard time making decisions within the timeframe they have. I can't imagine how they're going to make them ten times faster with no new money into the system. I think it's setting it up for failure, and I would be surprised if anyone on the board would really tell you anything different.

The timelines also ignore the practical realities of what goes into making a refugee case. I have lots of experience in the system. Fifteen days is not enough time for someone to come into the country, hire a competent counsel, prepare their claim in writing, and submit it. It just isn't. What is going to end up happening is people will either go before the board completely unrepresented, or you are going to drive them into the hands of crooked consultants and the lowest common denominator of representation, because that's all they will be able to get within that timeframe.

This is going to be a headache for decision-makers because competent representation adds value within the system. A competent counsel will make sure that the evidentiary rules are respected, that things are filed on time, that the proper evidence is collected in order to increase the quality of the decision-making for the decision-maker. With such a short timeline, you're going to force decision-makers to make decisions under the worst possible conditions, and it's not going to work.

I guarantee you this system, if implemented, will not be faster, and I'll tell you why. People are going to be forced to postpone and adjourn claims at an unprecedented rate. And if those requests to postpone those cases are not granted, it's going to end up in the Federal Court and people will win, because it's a denial of natural justice if a person does not have a reasonable opportunity for counsel.

Finally, on the one-year bar on H and C applications, you have the materials in the PowerPoint. I think it has been given to you. There are some examples of why this is a bad idea. People should not be forced to choose between having their claim determined on a protection basis versus a hardship basis. The one-year bar is arbitrary. Why is it one year? Why not have it six months. Why not two years? It just doesn't make any sense. There is no reason that humanitarian claims can't be decided quickly. I'm getting some back in as little as four months now on some of my cases. It's not going to introduce any undue delay into the system. It doesn't stop deportation even now. So if the concern is that it impedes the removal of people from Canada, it's not doing that. It's not doing it now and it wouldn't do it in the future. In order to impede removal, they'd have to go to the Federal Court and convince a judge on a very strict test. In my opinion, this change is simply not necessary. It doesn't add any value to the system.

● (1655)

I want to close by saying that I appreciate that this government is making efforts to streamline the system. It takes a lot of guts, a lot of intestinal fortitude, to tackle this stuff. It's a lot of work. I appreciate that, but my encouragement to you is that you have a chance to do it right.

I would love the opportunity to answer your questions on this, and I really hope you will take the opportunity to do this properly

The Chair: Thank you.

There will be questions, starting with Mr. Weston.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): Thank you, Mr. Tilson, and thank you both for being here.

I'm intrigued to read, Mr. Milner, about your background and some of the work you've done in Burundi and other places. I've stood on the ground in Burundi, where I've seen internally displaced persons who have been moving year after year, first to Rwanda and then back to Burundi, in what seemed like hopeless and hapless circumstances. Through Food for the Hungry, a group I was involved with as the chair, funded in part by CIDA, this group is secure and in a successful potato farming industry.

What you're talking about can happen. It's great to know that you think Canada has had some influence in helping people on the ground in these places, as opposed to the only remedy being to open our doors to an insupportable number of people, all coming here.

Let me ask a couple of questions. Ms. Desloges, I pay tribute to you for the things you do, how you do them, and the people you help. You're not saying that all the decisions are going to go against the applicants because of the expedited timelines. You're just saying that the decisions are going to be made in what you think are inappropriate ways. Yet we heard from people in New Zealand just yesterday that they're able to process their refugee decisions in about 15% of the time that we're processing our refugee decisions.

Do you want to reflect on that? You did say that we all agree we should be expediting things. You think for some reason this timeframe is unsupportable. It doesn't mean it's going to run against the applicants. You just think it's going to be difficult for people to make decisions in that timeframe.

Ms. Chantal Desloges: No, I think in most cases, it will work against the applicants—not all the time, but most of the time. The reason is that if someone is going to prove a case, to do that within such an accelerated timeframe is unreasonable. I believe you're a lawyer by background. To expect somebody to present a full case with documentary evidence under less than ideal conditions, possibly with expert evidence, is unrealistic within that timeframe.

An unproven claim without documentary evidence is going to weigh against the applicant. I don't know the numbers for New Zealand, but I would expect that their system is probably processing a lot fewer people than ours, even on a per capita basis. I think the board can move a lot faster than they are right now, but there's no justification for the crazy acceleration of time that we're seeing in the bill.

● (1700)

Mr. John Weston: Let me go back to you, Professor Milner, on the question of detention. What if I put to you the prospect that our proposed detention scheme is actually something that will increase the world's regard for us. If we don't have a detention scheme in place, we may not be able to even continue welcoming the numbers that are now coming in. The detention scheme, from my perspective, is a way to bolster the refugee system to make sure it's immune to criticism by Canadians who think we shouldn't be letting these people in.

There were 41 people who came off the two ships who, in fact, were legitimate cases for detention. They were either war criminals or they posed security risks. We have to have a good detention scheme in place, not because we want to detain people, but because we want to protect our country. Can't we make that case and continue our influence in the world?

Prof. James Milner: That's a very good question. Given the argument that I'm presenting, I come at this from an international perspective. I'm not a lawyer, so to look at the legal provisions of detention I defer to others who are more informed on that.

Look at examples of other countries that have introduced mandatory detention of arrivals by boat, specifically by boat, first as a way of trying to maintain public confidence in the asylum system, and second as a way of trying to maintain their level of commitment in the world. The most prominent case that comes to mind is the case of Australia in 2001, which introduced what became known as the Pacific solution.

I was doing research in Kenya at the time when the Pacific solution was introduced, and Australia was one of a number of donor countries in Kenya at the time that were trying to encourage the Government of Kenya to reduce the limitations on freedom of movement for Somali refugees who had been in the Daadab camps at that time for 10 years. They have now been in those camps for 20 years. The response that came back, that we heard informally, is the argument that Australia is able to maintain public confidence in their asylum system, but Kenya is not allowed to maintain closed camps to uphold their asylum system. It comes across as a question of double standards.

Mr. John Weston: I hear that.

You didn't raise that, Ms. Desloges, as one of your four. So may I take it that you understand and accept the rationale behind it? It's not because we want to be mean to people who are already coming from terrible conditions. It's because we want to make sure that we can continue to accept refugees, that we have this to check their identity and to make sure they don't pose a safety risk.

Can you comment on that?

Ms. Chantal Desloges: No, the fact that I didn't comment on it doesn't mean I agree with it. Mandatory detention for a long term is simply unconstitutional. I'm not going to talk about fairness. I'm not going to talk about bleeding heart issues. It's simply unconstitutional. The courts will not uphold it. One year is arbitrary. Why one year? Where did the one year come from?

Mr. John Weston: It's a specific number and it enables the persons to be freed if in fact their identity is proven. Or they can always apply to the public safety minister to be released within the year. So that can happen.

I don't see the constitutional problem that you are raising there. I think most people would agree we would be foolish to let everybody come in as a refugee, given that maybe only 0.1% of them pose a security risk, but that's enough to say to many Canadians, “I'm sorry, we can't have the risk of someone like that settling in our neighbourhood.” Our compassion, which is invested through our government into a very vibrant refugee system, will be cut off. We can't afford that.

The Chair: We're out of time, sir, I'm sorry.

Ms. Sitsabaiesan.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): Thank you to both of you who are here today with us.

Mr. Milner, you were talking about the overall themes of refugees, mandatory detention, and designated countries. Can you comment on the impacts of refugees who are trapped in protracted refugee situations?

Overall I have about seven minutes and I have about three or four questions for you.

Prof. James Milner: The impact on refugees in protracted refugee situations—on refugees themselves or on the states and communities that host them?

Ms. Rathika Sitsabaiesan: On the refugees themselves.

Prof. James Milner: Okay.

Very specifically, what we find is that for refugees who are in a protracted refugee situation, human rights violations are significantly higher than for those who are not. Long-term exile leads to higher levels of sexual and gender-based violence. It leads to higher instances in crime and insecurity within camps, especially as assistance to the camp-based populations is withdrawn and prolonged exile without a viable foreseeable durable solution frequently leads to irregular secondary movements, so moving to urban centres or seeking a perilous journey to another area.

The very short answer is that there are significant human rights concerns as exile becomes increasingly prolonged.

● (1705)

Ms. Rathika Sitsabaiesan: I know from my understanding of the Geneva Convention that a country of origin is not one of the motives of persecution. The safe country list just doesn't make sense to me.

What do you feel the impacts would be on refugees who are fleeing these serious situations, especially when they come here and face mandatory detention and that mandatory detention could be for up to one year after arrival?

Prof. James Milner: Specifically on the question of the safe country of origin list, UNHCR, in its global consultations process 10 years ago, concluded that best state practice...that there are procedural reasons why a safe country of origin list might exist. The concern I have with the safe country of origin list is the fact that it remains the prerogative of the minister to determine which states will be on the list.

Ms. Rathika Sitsabaiesan: Right, so the concentration of power within....

Prof. James Milner: It's the discretionary power in the hands of the minister, as opposed to an independent panel of experts.

Ms. Rathika Sitsabaiesan: If I remember from your original testimony, you did suggest that we should go back to what was in Bill C-11 and have the—

Prof. James Milner: The independent panel of experts—absolutely.

Ms. Rathika Sitsabaiesan: So in the situation of people who are fleeing these situations of persecution, how do you think the impact would be on these refugees when they're faced with mandatory detention for up to a year here?

Prof. James Milner: If you consider again, as in my response to Mr. Weston, applying the case of Australia, where we see the most documented example of mandatory detention and the human cost associated with it—and this was laid out by a group of Australian NGOs in a letter to Prime Minister Harper in December 2011. They documented that in the year 2011 there were six suicides in Australian detention centres and there were 17,000 instances of self-harm within these detention centres.

More than a decade after the introduction of mandatory detention as part of Australian policy, it has cost over $1 billion Australian over five years and has not effectively been a deterrent.

The human cost, as we can see in instances of suicide and self-harm, is quite high, but so is the financial cost. It was very surprising for me, when I did research, what those costs actually broke down to be.

Ms. Rathika Sitsabaiesan: It's funny you brought up Australia, because we had a witness here earlier this morning who was talking about the same...I want to say horrible outcomes from the mandatory detention that Australia has practised over the many years.

We've heard the minister say they want to use detention as a means of deterring asylum seekers coming to Canada, but we're seeing that detention is being used as a form of penalty. What is your opinion about detention and penalizing refugees as a means of deterring them from coming to Canada?

Prof. James Milner: From a very practical point of view, it doesn't seem to work.

Ms. Rathika Sitsabaiesan: Australia is a one-case example.

Prof. James Milner: That's right. Again, referring to the case of Somalia refugees in Kenya after 20 years in a very isolated, insecure camp, where instances of rape, armed robbery, and murder are practically daily occurrences, taking the risk of onward movement, the perilous crossing of the Strait of Yemen, crossing the Mediterranean, the perilous trip down to South Africa, what we find is that....

First of all, it takes a very long time for word to spread that there's that kind of penalty that will be in place. Second, even that penalty does not seem to be effective as a deterrent. Third, the human cost—again I refer to the six suicides and 17,000 cases of self-harm—strikes me as quite extraordinary.

Ms. Rathika Sitsabaiesan: I think that's quite a high human cost, and you were saying billions of dollars in cost to the state as well.

I think I have about a minute and a half or two minutes now. Could you comment on the creation of a new category of refugees? It's a two-tier refugee system now.

● (1710)

Prof. James Milner: I think this plays very much into a lot of rhetoric that we've heard about an asylum queue and bogus refugees and queue jumpers. The fundamental principle is that an individual is a refugee once they have gone.... We cannot know an individual's refugee status until that status has been determined by an objective and independent process. The dangerous knock-on effect of language of a two-tier refugee or a bogus refugee....

Let me use the example of Thailand. Thailand has about 150,000 refugees from Myanmar in camps along the border, but an estimated one million individuals who have fled refugee-like situations within Thailand are not allowed into those camps. The Royal Thai government officially says these are not refugees; they're economic migrants. That is a rhetorical sleight of hand. The status of these individuals has never been determined.

Once we go down the path of saying there are rhetorically different kinds of refugees without them having gone through that process, we lose the moral authority to be able to work with partner countries like Thailand, which, given the cases that have been prevalent leading to this bill, is a very important country of first asylum in the region. We lose that position of moral authority when negotiating with partner countries abroad.

The Chair: Thank you, sir.

Mr. Lamoureux, go ahead.

Mr. Kevin Lamoureux: Mr. Chair, I'd like to continue with the whole idea of moral authority. I think one of the discussions that has actually been lost in this whole debate on Bill C-31 is that if we take a look at the bigger picture, we have over 10 million refugees throughout the world.

Prof. James Milner: That's right.

Mr. Kevin Lamoureux: In order for Canada to really be able to contribute to that immense problem of displacement, we need to be able to influence the world. The world does look at Canada and the policies. I think this is where Bill C-31 likely causes the most damage to our reputation and to our ability to contribute to that 10 million. Is that a fair assessment, Mr. Milner?

Prof. James Milner: Thank you, sir. I think that is a very fair assessment.

If we were to consider the diplomatic cost of introducing such restrictive legislation in response to the arrival of less than a thousand individuals by boat and the panic that is created by that, how that prevents us from opportunities to engage....

Here are some success stories of what Canada has been able to do: negotiate with the governments of Nepal and Bhutan to find solutions for 105,000 Lhotshampa Bhutanese who've been in exile for 20 years; Canada's leadership in the resettlement of the Rohingya from Bangladesh, who had been there for 20 years; the work that Canada has done with the Karen refugees from Thailand; and what Canada is trying to do for the local integration of Burundian refugees who've been in Tanzania since 1972.

This kind of diplomatic impact is the most cost-effective way we contribute to the global public good of asylum and contribute to the pursuit of solutions. It is not something that benefits only those countries hosting refugees in the region of origin; it's ultimately in Canada's interest. The logic has been the same for the past 60 years, since we've had the global refugee regime.

Mr. Kevin Lamoureux: I want to look at three points you've raised and provide comment, and then you can make sure I have it right.

First, the safe country list is something that in principle you support, if in fact it's truly independent. The purpose of that safe country list is to put countries like Hungary and so forth on it to deal with some of the concerns the government has put forward.

The second point is regarding detention. It seems to me that you would be against detention outright. I don't want to put words in your mouth, but some individuals, and I'm hoping you might be one of them, would suggest that it might even be constitutionally challengeable on whether it is legitimate to have mandatory detentions. But again, the damage it does to our reputation seems to be your biggest concern.

The third point is the taking away of a refugee's status after they've been deemed a refugee, for the simple reason, as my colleague points out, that it seems to establish a two-tier system.

Do you want to provide a quick comment? If there's any time left, maybe Chantal will get a chance to comment.

Prof. James Milner: Very quickly, on the question of the country of origin list, as the UNHCR found in 2000–01 in the global consultations, in certain instances, the safe countries of origin list can be an effective decision-making tool. It can make a contribution, but it concludes that the best state practice means that safe country of origin list cannot be applied in a rigid manner but must be based—any presumption of safety—on precise, impartial, and up-to-date information.

The impartiality of the development and maintenance of the safe country of origin list is my greatest concern.

On the question of detention, I would defer to colleagues. I know that the Canadian Association of Refugee Lawyers submitted a very detailed brief on the question of detention. As I'm not a lawyer, I can't speak to the constitutionality of it, but what I can say is that the single most consistent message that Canada delivers internationally is that refugees need to be provided with greater opportunities for self-reliance, freedom of movement outside of being confined to refugee camps.

In many refugee camps around the world, refugees are simply not allowed to leave the camp to engage in wage-earning employment. That's effectively detention, so we lose our ability to make that argument.

On the question of permanent residence, I specifically comment on opportunities for the cessation of permanent residence status for resettled refugees to Canada. The fact that Canada, through its own resettlement program or through the private sponsorship program... the fact that an individual is interviewed overseas by a Canadian visa officer, that they pass a security clearance, that they pass their health clearance, that they are given status to come to Canada, that they arrive in Canada—that is an incredibly important tool of protection. It's a solution for individual refugees, but it's also a mechanism for burden-sharing, to leverage opportunities for other refugees who are not able to resettle.

Having a mechanism by which that durable solution could be revoked runs fully counter to a consistent message that Canada has been stating internationally for more than five years.

● (1715)

The Chair: Thank you.

Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you very much, Mr. Chair, and to our two guests.

Earlier today, in the last hour, we actually had someone from Hungary, a counsellor from the embassy, and there were a couple of things he said that really struck a chord with me with regard to this particular bill.

We were trying to figure out why so many people from Hungary are coming to Canada and claiming to be refugees. Why do a large percentage of them actually not stay in Canada? They actually abandon their claims, withdraw them, or their actual claims are rejected. That's 95%, actually, from the European Union.

He said two things. One, they're seeking a better way of life, and two, they're coming here in order to get easy money. The second statement is quite alarming. When I think of the definition of refugee, and I've actually been looking up the definitions to get a cross-section of them, the thing that comes up predominantly is someone who is forced to leave a country in order to escape war, persecution, or natural disaster. If someone simply just wants to have easy money, is that a legitimate refugee?

Ms. Chantal Desloges: No, but you're not using the correct definition of refugee. According to the convention, it's to escape any kind of persecution—

Ms. Roxanne James: Correct.

Ms. Chantal Desloges: —which can be cumulative as well. But no, running away for economic reasons certainly does not make a person a refugee.

My only comment about the previous speaker is that he kind of lost his credibility with me when he said there's no discrimination against Roma in Hungary. Every single NGO says the exact opposite thing. To me, his testimony was a bit partisan. I'm not saying Hungary is or isn't. I'm just saying that I find his testimony a bit questionable.

Ms. Roxanne James: Thank you, and I thank you for your comments.

Mr. Milner, do you think that someone who simply wants to leave their country for a better way of life or for easy money fits into the definition of what we think of as a refugee? Also, I want to point out that the last speaker, from the embassy of Hungary, actually indicated that it is the wrong way to come to Canada, that there is the proper way to emigrate to Canada, and some actually do choose that route.

Again, would you consider a refugee to be someone who simply wants to get easy money?

Prof. James Milner: I agree with my colleague that the definition of refugee, according to the 1951 convention, is someone outside of their country of origin due to a well-founded fear of persecution for one of five reasons. How we interpret those five reasons is something that has evolved over time.

What I would note, and what I take away from the testimony of the representative of Hungary, is the great importance of engaging countries of origin in any comprehensive solution for refugees. This is not the first time we have faced challenges of individuals moving for blended reasons, be they economic, be they social, be they fear of persecution.

● (1720)

Ms. Roxanne James: Thank you. I understand. We were just talking about this because he was our speaker in the last hour, but when 95% of the people from the European Union who try to make claims in Canada as refugees abandon their claims, they don't show up for their first hearings, after being able to receive lucrative payments here in Ontario, in my province, where my riding is, do you think that's fair to taxpayers? I'd like a yes or no answer.

I understand your position already, but do you think that's fair to taxpayers? Do you think it's responsible government to allow this to continue?

Prof. James Milner: As an Ontario taxpayer, I think it's responsible government to have a credible and independent process to determine the claims of individuals on their merit.

Ms. Roxanne James: Thank you.

In your previous answers you've been talking about refugees having the right to movement. In reference to a mass arrival, again, there aren't many here in Canada. There have been a few hundred refugees coming in through irregular mass arrivals in the last decade. But with regard to movement, we actually don't know they're legitimate refugees when they first arrive. In many cases, they come without proper documentation. They've thrown it overboard. They have false documents. In many cases, the people who are actually involved in the smuggling are arriving as one of the refugees, or are requesting refugee status here in Canada.

Are you saying that until they are determined to be legitimate refugees they should have movement, or they shouldn't have movement?

Prof. James Milner: I would actually defer. As I'm not a lawyer familiar with the Canadian process, I wouldn't claim to have credibility on that or a position.

Ms. Roxanne James: It's not necessary to be a lawyer. In your opinion, do you believe that someone...? Anyone can claim refugee status. Many cases are accepted, as they are legitimate refugees, and some are discredited and they're not accepted. But until people are actually determined to be refugees, do you think they should be able to move freely in our country without our being able to identify who they are first?

Prof. James Milner: My understanding is that it's a constitutional right that we have in Canada, so yes.

Ms. Roxanne James: Okay. In actuality, detaining someone to identify their proper identification exists today, so we are in accordance with all the international laws and the charter and everything else.

Is my time running out?

The Chair: Yes, it is. You have about a minute and a half.

Ms. Roxanne James: In the minute and a half that I have left, then, perhaps I can ask you the same question. From a lawyer's perspective, do you think it's legitimate that someone who comes here with false documents, with no documents, is allowed to just freely move about Canada without our knowing who they are?

We've heard testimony about the *Sun Sea* and the *Ocean Lady*; 41 of those people who came on those boats were found to be inadmissible for war crimes and other such things.

A voice: Security.

Ms. Roxanne James: And security reasons, thank you.

So I'm a little bit stumped when I hear people say that we should just allow these people—who have claimed to be refugees, but until they're determined to be refugees—to roam freely within our boundaries of Canada. I would not want to have to speak to my constituents and say I would support that. I would not support that.

Ms. Chantal Desloges: I certainly don't agree with allowing people to go free before we know who they are, or if we have security concerns about them. That's 100% for sure. I think almost everyone would agree on that.

The problem is that if there is no basis for a finding that they are a security risk, then I don't see any reason to mandatorily detain them just because of their method of arrival.

Ms. Roxanne James: Thank you.

I'd actually like to make reference to Bill C-31, because in actuality, once we determine that they are legitimate refugees, they will be released from detention.

The Chair: Ms. James—

Ms. Roxanne James: It's not a mandatory minimum one year for everybody. I just want to clarify that.

Thank you.

The Chair: Thank you.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

I want to thank both of you for taking the time to come and make a presentation.

We've had a number of our witnesses here talking about the designated country of origin. Both of you have really impressed me with your rational approach to it, saying that there is kind of a space for designation, but it needs to be done by a panel of independent experts.

Actually, when you look at Bill C-11, which was the great Canadian compromise that took place only a few months ago, that's exactly where it was at then.

I just want to get on record, did I hear both of you say that?

Ms. Chantal Desloges: Yes.

Prof. James Milner: Yes, absolutely.

● (1725)

Ms. Jinny Jogindera Sims: Thank you very much.

I've often heard, sitting here at the committee level, that we have to shorten the timelines because somehow that will speed things up. But today you have painted a very, very clear picture that it could actually lead to making things worse. As you get into more litigation because you deny people rights, that could actually lead to higher costs.

Do you have a comment to make on that?

Ms. Chantal Desloges: Yes. I mean, I just don't think it serves the objective. If the objective is to make the system faster, then we have to do it in such a way that people are treated with procedural fairness so that they can't then later make postponement requests, or go to the Federal Court and say that natural justice was denied and then get sent back and have to go through the whole thing again. It's not only expensive for claimants, but it's also going to clog up the court system.

You can imagine how many different postponement requests there will be, and not all of them will be granted. Then we're just shifting the burden away from the refugee board onto the Federal Court, which is still a taxpayer expense; it's just moving the problem.

Ms. Jinny Jogindera Sims: Thank you.

The other thing that really hit me today was when you said that it could lead to accusations that people were being denied natural justice if you didn't give them all those opportunities.

Ms. Chantal Desloges: Yes, because the right to natural justice means the right to a fair hearing. A fair hearing includes the right to have a proper amount of time to prepare yourself to present a full defence, as well as the right to competent counsel. You won't get competent counsel within those timeframes; you just won't.

Ms. Jinny Jogindera Sims: No, and thank you very much. We've heard that from a number of different lawyers here.

We've sometimes even heard the comment that lawyers are only saying this because they want to line their pockets, but I think, from what you're saying, it could be more lucrative under the new bill than under the current system.

Ms. Chantal Desloges: [*Inaudible—Editor*]

Ms. Jinny Jogindera Sims: It's just my observation.

Over the last few days I've heard some quite alarming numbers when it comes to refugees from Europe, especially Hungary.

Chair, with your indulgence, perhaps we could ask our parliamentary analysts if they could gather some data for us. I have nothing to base this on. I've heard Mr. Dykstra use some numbers, and now Ms. James has used some numbers. I would just like to know, if those numbers are being used as a justification to promote this bill, then I think I would like to check the validity of those.

The Chair: I don't see any objection, so of course.

Ms. Jinny Jogindera Sims: Okay. Thank you very much.

The other question I have is this. We've talked a fair bit here earlier today about the psychological trauma of detention, both for adults and children, especially for refugees who come here from, I would say, not very stable environments. Perhaps both of you could comment on the legal elements of, let's say, forced detention.

When you read our bill the way it is written, Bill C-31, it actually does say that you can be kept in detention for up to a year. Nowhere is it explicit in there that once you've been designated a refugee, you're going to be released. We will be looking at some amendments in that area, obviously. Could you comment, not on the personal toll it takes psychologically, but on some of the legal challenges?

The Chair: Our problem is we're out of time. I'm sorry.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Chair. I'll move quickly.

I want to close out a question that Ms. James had. As she mentioned, Mr. Milner, you referred a number of times to refugees having the right to movement within the country. I don't disagree with you—I agree with you wholeheartedly—but I think you've mistaken the purpose of detention for holding back the ability of refugees who have been declared refugees to do as you suggested, and we're talking about those who would be here who are unidentified. Those, in fact, are the folks who we're saying should be detained until they've achieved, obviously, identification and potential refugee status. I hope you'll acknowledge that there is a significant difference between your statement of free movement of a refugee versus what we're talking about with respect to the clause in this bill.

Prof. James Milner: If I may, on the question of detention, when there was the 50th anniversary of the 1951 convention, there was quite a process whereby states brought forward concerns they had about gaps they identified in international refugee law. One of them was on the question of the application of detention. It was found there that there are very specific instances where detention may be permissible, for example, in the question of verifying identity. But the subsequent document that came out of this multi-year process, this document called *Agenda for Protection*, which was endorsed by the UN General Assembly, specifically calls on states, and here I quote:

> ...more concertedly to explore appropriate alternatives to the detention of asylum-seekers and refugees, and to abstain, in principle, from detaining children.

—which was defined as under the age of 18.

● (1730)

Mr. Rick Dykstra: Which we've done in changing in the bill. I really appreciate the clarification. It means a lot to what you stated here.

Chantal, could I get your comments on that? I know you did start to respond. I'd just like to get your perspective on this as well.

Ms. Chantal Desloges: I certainly think that if we aren't clear about who someone is, detaining them is a reasonable measure. The problem I have is the way it's written now allows detention on mere suspicion of inadmissibility. The way it was worded is that you have to have "reasonable grounds to believe", which doesn't mean beyond a reasonable doubt; it just means you have to have a reasonable ground to believe that this person may be inadmissible.

"Suspicion", I think, is far too nebulous. Suspicion is not an objective standard. It's a completely subjective standard. And I would disagree with that. I think it's just a little bit too loose.

Mr. Rick Dykstra: Okay. Thank you very much.

The Chair: Thank you very much.

We will not suspend. We're going to move right into the next panel.

Ms. Desloges and Professor Milner, I want to thank you for your presentations and comments. It was greatly appreciated. Thank you for coming.

We have before us Mary Crock, who is a professor at the University of Sydney; and Daniel Ghezelbash, who is also with the faculty of law at the University of Sydney.

Thank you both. I guess it's 7:30 in the morning there. We're at 5:30 here, yesterday.

You have up to 10 minutes to make a presentation, if you wish to say a few words to the committee.

Professor Mary Crock (Professor of Public Law, Faculty of Law, University of Sydney, As an Individual): Thank you very much.

[*Translation*]

I would first like to thank the committee for inviting me to make a presentation. I am very grateful.

I am going to speak in English, but I can answer the questions in either English or French.

[*English*]

The Chair: You can speak in French or English.

Prof. Mary Crock: Thank you very much for the opportunity to speak to you.

I have spent some time in Canada. In fact, I was in Canada during the period of September 11, 2001, when Australia took the opportunity to change its laws quite dramatically so as to become much more punitive towards people arriving by boat.

I would like to address, in particular, in my opening remarks, the changes proposed in Bill C-31, which involve the treatment of irregular arrivals through the introduction of mandatory detention of one year and the introduction of temporary protection visas.

It is our view that the amendments place Canada at risk of breaching obligations it has assumed under international law. I see that you have already had a number of people address you on this issue.

I would also, however, like to talk to you about Australia's experience and the extent to which the laws you are now envisaging for Canada have had very detrimental effects in Australia. I will leave my Canadian colleagues to spell out how I think the proposed laws would be in breach of Canada's Charter of Rights and Freedoms.

I'm sure you've had many people expressing their disappointment that Canada appears now to be engaging in something of a race to the bottom in terms of its standing as a humanitarian country. Not only, I think, is it abandoning ostentatiously the role it has played in modelling international legal best practice in human rights, but it appears to me to be going out of its way to cherry-pick all the elements of regressive bad practice that have been devised by its two main comparative countries, Australia and the United States.

The sadness for me, I think, is that in doing this, Canada is setting itself on a slippery slope from which it will be very difficult to return. This has been Australia's experience. Put simply, in practical terms, I do not think the measures you are proposing to introduce will act as effective deterrents to irregular migrants. They are likely to have huge financial, and more importantly huge social, costs.

I do acknowledge, however, that the measures you are looking to introduce are powerful electoral tools. They work, in fact, to foment and focus unease with persons of visible difference in society. For this reason, in societies like ours that are heavily multicultural, they can be socially very damaging. In this respect, in fact, the laws represent some of the most cynical initiatives governments can take to play to what we might call the redneck elements of society.

Our former Prime Minister, Paul Keating, in fact, referred to Australia's version of these laws as "lifting the rock". He could have added, "stirring the scorpions", *un véritable noeud de vipères*.

If I may, I'll just briefly talk to the two measures we want to focus on. First is the introduction of one-year mandatory detention. Australia's mandatory detention laws, you may be interested to know, began as laws that, in fact, mandated detention for nine months. In fact, they specified 273 days and were put in place for a group of about 400 asylum seekers from Cambodia, who were also, interestingly, styled "designated persons". I should tell you that they in fact remained in detention for four years before they were ultimately sent back to Cambodia and then brought back to Australia, where they were all given permanent residence.

I think the changes you are proposing are of quite critical significance, because as I say, they are, for me, the thin edge of the wedge that is likely to see Canada introduce increasingly draconian legislation that will be increasingly abusive of human rights. I share the previous interlocutors' concerns about the terms of the legislation and the fact that the mere suspicion of a person's status as an irregular arrival would be enough to mandate detention.

● (1735)

I'm less concerned about release after somebody has been recognized as a refugee. My concern is that once you introduce mandatory detention, the prospect of processing times stretching out actually increases; it doesn't diminish.

One of my concerns about the legislation and about giving the power to an official to mandatorily detain somebody is the removal of judicial oversight of that process—the fact that somebody must be detained for one year and that judicial oversight will only occur every six months.

When we did this in Australia, we used very similar language. In fact, there appears to be quite a degree of legal borrowing happening in this space. One of the effects of this was that we ultimately saw a great number of legal permanent residents, and indeed even a citizen, being arrested and removed from the country without the oversight of the judiciary because our laws talked about mandatory detention. In fact, our laws talked about the "reasonable grounds to believe", but even so, without judicial oversight of the process, people were wrongfully detained.

We are able to supply for you the financial costs that mandatory detention has brought for Australia. Over the years, the cost has grown exponentially. In the 2011-12 budget, we spent more than $700 million running our detention centres offshore, and our detention centres onshore cost us nearly $100 million. These are not small amounts of money, and they have grown exponentially over the years. You will find yourself spending huge amounts on building more and more detention centres as these come. The amounts we have paid out to people who were wrongfully detained because of the laws we put in place.... A report in recent years in 2011 suggested that the Australian government has paid out more than $16 million in compensation to asylum seekers and detainees who were wrongfully detained.

I would also invite you, however, to have a look at the social cost of these measures. We have found in Australia that mandatory detention has never deterred a single asylum seeker. Unfortunately, countries like ours tend to attract genuine asylum seekers. I know that there is also a concern with people who are not launching genuine claims, but in fact in world terms, our countries attract people who have genuine refugee claims. The result is that when you introduce punitive laws like these, they can affect the whole fabric of society.

I will just say in closing that the measures to introduce temporary protection visas are also extremely regressive. In Australia, not only did they not deter anybody; they in fact changed the composition of the asylum-seeker population coming to Australia, because instead of being able to bring families in using legal methods, people were forced to use irregular migration to get their families to join them. For that reason, we saw within a very short space of time an enormous increase in the number of unaccompanied children and women who were coming out as irregular maritime arrivals.

These are very complex matters. We live in western democracies that are attractive to people who have been persecuted around the world. We also live in democracies that have been built on systems of justice and equality that should be the envy of those of us who are citizens of this society. To introduce laws that threaten that fabric, that encourage these events is very regressive.

● (1740)

Mr. David Tilson: Thank you, Professor Crock. Thank you very much.

Ms. Sims has some questions.

Ms. Jinny Jogindera Sims: Thank you very much for giving up your time to share your experiences with us.

I have a number of questions.

We have some really serious concerns about how bad this bill is for families, and in particular for children. In your research and in your presentation you have talked about a child-focused approach to children arriving as refugees. Can you talk about what you mean by "child-centred" and why such an approach is important when it comes to refugees?

Prof. Mary Crock: Children are affected by these laws at a number of different levels. In my opening statement I mentioned very briefly that if you introduce temporary protection visas, the usual modalities for the movement of asylum seekers are altered.

By this I mean that the usual pattern of refugee migration is that the fathers or the oldest sons are often the ones who take to the air or sea fleeing persecution from their country. They do that first of all because they tend to be targeted first, and secondly because very often they want to go to find a safe haven for their family in a third country.

If they are able to do that by themselves and then bring their families out by lawful means—through family reunification—then the process is one that benefits the children and families directly. If you introduce temporary protection visas, what happens is that the adult males or oldest sons continue to be the ones who leave first, but they are not able to be joined by their families. It forces those people to put their children and their wives under immediate threat of irregular migration—particularly irregular maritime migration, which is probably the most perilous way to get into a country. That's at the most basic, gross level.

We found in Australia that within about six to eight weeks, the number of children on board the irregular maritime vessels jumped from 5% to as much as 60% or 70%. It was an absolute disaster. You then end up with children who, in our case, were placed in detention. Up until 2005, our mandatory detention laws didn't make a distinction between men, women, and children in terms of age at all.

I can see that your laws will. Even so, if you are dealing with very young children who have been put into that situation and you make no provision for allowing them to properly be cared for by their parents, then you are just creating enormous problems for the country in terms of the care of these kids—who will be put on the boats. I can promise you that it will happen; there's no doubt about that.

When you introduce punitive laws like these, they also place enormous pressures on the people who are having to do the asylum determinations.

I'm known as a refugee advocate, but I have worked for many years. I set up one of the first organizations in Australia to actually help people with their asylum claims and their immigration cases more generally. I have worked in practice, I remain a practitioner, and I still drag my students into the practice of.... I'm conscious of how difficult it is for the decision-makers, for the officers who have to do this work.

Let me say that laws like these have an enormous impact at every level. They impact upon the people who have to detain these individuals, who are faced with the daily stresses that this type of mandatory detention places on people. They do nothing to make processing fairer or faster, in my view.

● (1745)

Ms. Jinny Jogindera Sims: Thank you very much.

I just want a comment from you on 16-year-olds. Under the government's bill, Bill C-31,16-year-olds would fall into the category of children. Could you clarify for the committee whether you believe a child-centred approach should apply to 16-year-olds, and why?

Prof. Mary Crock: There are two points.

One is that, really, there's a lot of evidence to the effect that 16-year-olds are still very vulnerable. I think 18-year-olds can still be very vulnerable. In the cognitive development of children and the social development of children, those are very critical years. I think that's a problem in itself.

The other problem you're going to face here, though, is that when you start putting in age units like that, you're going to be faced with more and more issues relating to the assessment of age in individuals. Sadly, Australia has really exhibited some of the world's worst practices in age determinations. But you're really creating enormous problems for your decision-makers in having to make a call.

People do not arrive with their birth certificates. Some countries, such as Afghanistan, don't even mark ages the same way we do, so age determination becomes a very imprecise science. You will end up with children aged 14 being assessed as being 16, 18, or 17. Once you put down age units at 16 like that, you're introducing all sorts of problems. Again, I think it's a very regressive measure.

● (1750)

Ms. Jinny Jogindera Sims: Thank you.

Based on the research you have done, what are the lessons that you feel Canada could learn from your experience?

Prof. Mary Crock: Well, our experience is quite well documented in the reports I did with Jackie Bhabha at Harvard University. If you have a look at the four reports we did entitled "Seeking Asylum Alone", a study of unaccompanied separated children seeking asylum in Australia, the U.S., and the United Kingdom, those reports will give you a spectrum of three countries that took quite different approaches.

We found that the country that was probably doing it best was the United Kingdom, and at that time Australia was the worst. We have lifted our game somewhat, but I think the message I have for you is that, look, these measures do not deter. They cost a fortune. Financially they cost a fortune and socially they cost a fortune, because this foments dissent amongst people.

The trouble is, you see, that what happens with laws like this is that the general population sees the laws as targeting people of difference within society, so that's anyone who is of a different colour, who dresses differently, or who is of a different religion, and they can't tell, once you're out of detention, if you're—

The Chair: We have to move on, Professor Crock.

Prof. Mary Crock: —an asylum seeker or not.

Thank you.

The Chair: Thank you.

Mr. Leung, you have the floor.

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

Mrs. Crock, I am taking the approach that we're looking at this as parliamentarians. As parliamentarians, we're here to look at the interests of Canadians first. Canada, like Australia, has a fairly generous immigration policy. It is also our task to make sure we spend the taxes of Canadians in the most expeditious way.

Now, within that immigration framework, if we detect people coming in and abusing our system, we need to have laws to deter this. If it's an economic migrant, then yes, they can certainly apply through our regular system, but if they're irregular arrivals and they're abusing the system, we need to take adequate measures to prevent this from causing disruptions in our society.

From that, we need to medically pre-screen some of these people. We need to establish their identity. We need to do all of this. That is, I think, one of the primary reasons why we need a certain amount of detention period—in order to ascertain that.

I've worked with refugee camps in Thailand, in Taiwan, and also in Hong Kong. In every place I've seen, they do use detention. I believe in Australia they do, too, so perhaps you can elaborate for me on what your suggestion would be if you don't use this method. Or how would you document these people before you let them into your country?

Prof. Mary Crock: First of all, we're talking here about irregular arrivals. As I understand it, this legislation targets asylum seekers or people arriving in larger numbers.

There are a lot of issues that you've brought up in your question or comments to me. First and foremost is the right of Canada to regulate migration. I don't think anybody would disagree with you on that front. The complexity arises because the laws you are proposing go far beyond measures that would just protect Canada's interests, in terms of working out who is coming into the country. There is detaining people for the purpose of identification, seeing whether they represent a health threat to the country, and there are laws that mandate detention for one year.

One can operate in the national interest, but clearly the other one moves from the national interest to punishing people in the effort to deter irregular arrivals. There is no law that prevents a country from looking after its own national interest in terms of protecting itself against people who might present a threat to security or to health. It's quite different, however, when you start introducing laws that are not based on any reason but are just blanket, mandatory laws that have no reason for them that relate to national interest.

The problem for me is that there is an assumption being made that if you copy the laws Australia has been using for a number of years, it will somehow have the effect of deterring irregular arrivals. What I'd like to put to you is that Australia's experience does not bear that out at all. Mandatory detention has never deterred anybody, and it's not about to here. What it will do, if you're interested in knowing what the cost to the taxpayer in Canada is going to be, is put your bill through the roof. The cost of building detention centres.... We've spent half a billion dollars building a detention centre on Christmas Island. The cost of construction alone is phenomenal, when you start looking at this. I advise you to look at that.

The social costs, however, that I've been trying to explain are also quite enormous.

● (1755)

Mr. Chungsen Leung: You mentioned that the U.K. as one of the best examples. Perhaps you can share with us your research in this area and tell us whether they detain irregular arrivals or not.

Prof. Mary Crock: They don't. Look, Canada I think was the best until you proposed these laws. The short answer is that it doesn't make any sense to lock people up for no reason. If you're doing it because you think it's going to deter people, it's not going to deter a single asylum seeker. I put it to you that the real reason you're doing this has nothing to do with deterring irregular arrivals; it has everything to do with telling the Canadian public that you're doing something about irregular arrivals. It seems that electoral gains might be outweighing the financial costs.

What I'm trying to put to you is that it's a false assumption. I know that countries are looking at each other's laws and that political parties are sharing their experiences. My complaint is that claims made by the politicians and even by the administrators about the effect of legislation...and there is really no evidential base for the claims that are accepted quite blandly by politicians around the world.

Mr. Chungsen Leung: Let me suggest that Canada is very generous in its acceptance of refugees around the world. We take in 14,000 to 15,000 a year. However, there is the rule of law. Fairness is important, and people who come in who are economic migrants or who are some—

The Vice-Chair (Ms. Jinny Jogindera Sims): Mr. Leung, if you could just finish up....

Mr. Chungsen Leung: There are some others who want to shortcut the system—

The Vice-Chair (Ms. Jinny Jogindera Sims): Okay, thank you.

Mr. Chungsen Leung: —or jump the queue, those need to be dealt with.

The Vice-Chair (Ms. Jinny Jogindera Sims): Thank you.

We're now going to move to Mr. Lamoureux.

Mr. Kevin Lamoureux: Thank you, Madam Chair.

It's great to see our special guests take the time to be on TV here in a teleconference. I very much appreciate your comments. I think we're not that far off in terms of the way we're thinking here. Earlier this evening I made reference to the fact that we have to be concerned about Canada's image and the role we could be playing with regard to the whole refugee issue, which is far broader than that of any given country.

I must say that this particular government seems to reflect a lot on Australia and figures this is the direction we need to go in. A number of us are starting to say this is the wrong direction.

When we talk about detention, I think it's important to note that we do have a detention process today. In that detention process there is judicial overview, which ensures a sense of fairness. The move to mandatory detention, which the minister is proposing to do, is very new here in Canada. We hope to demonstrate to the minister that not only is that the wrong thing to do, but it's against our Constitution to be able to proceed with mandatory detention.

From what I understand in your presentation, mandatory detention had no impact on preventing boats from travelling to Australia. The only real impact has been on the annual budget for detention, which I think people need to be concerned about here.

Our border services presented the other day and indicated that the current system was working quite well.

Professor Crock, I look to you as someone who's fairly knowledgeable. No doubt you've studied other jurisdictions, and you said Canada was the best. What's your opinion if this bill does not get the amendments to deal with some of the concerns you have in terms of Canada playing that leadership role?

How is that perceived among your peers?

● (1800)

Prof. Mary Crock: I think the sadness for me is that the conservative countries seem to have come to the view that countries are foolish if they are humanitarian. It seems to me that Canada wants to divest itself of the mantle of leader in the humanitarian sense. Perhaps the idea is that Canada is becoming a magnet because of its humanitarianism, and therefore it needs to fall into line with more punitive countries.

I think that is a great pity. We've seen it happen with our political parties. When I said before that the introduction of laws like this represents the top of the slippery slope, the problem is that if you have one party that says we are foolish to be fair, to be humanitarian, it becomes very difficult for opposition parties to then say, no, we're not. We should be leading the world in this area.

The popular view is always going to be to punish the outsider, punish the person who is different. That's why I think what you have achieved in Canada is a really precious and fragile thing that is very easily dismantled, and I think you will find a lot of people around the world looking at what you're doing now, not only in this area but also in your proposed laws in areas like cluster munitions. It's very sad to see Canada going down that road.

Could I make the point of the social impact of detention? You ought to be looking—there has been so much written about detention in Australia and the impact it has. The personal impact that detention has on detainees, where detention gets protracted.... Believe me, although your laws say one year, you will end up having people in detention for very much longer. Once you start that, it's very hard to undo it.

We are still suffering a pandemic of mental health issues, of self-harm, of death in detention, even under—

The Vice-Chair (Ms. Jinny Jogindera Sims): Could you finish your sentence, please?

Prof. Mary Crock: —what might be a more progressive government.

Thank you.

The Vice-Chair (Ms. Jinny Jogindera Sims): Now we will go to Mr. Dykstra.

Mr. Rick Dykstra: Ms. Crock, you've continued to comment about the purpose of detention as being some sort of a deterrent, that you feel that's the reason we're doing this. Where did you come up with that idea?

Who told you that the reason the government is moving with respect to C-31...that the purpose of detention has something to do with deterrence? The bill doesn't say that. The government hasn't said that. Who has told you that?

Prof. Mary Crock: A lot of the language of the discussion we've been having has been the language of deterrence.

Mr. Rick Dykstra: Well, you're the only one who's been speaking it. You started by saying you thought if we were doing this for the reason of deterrence, the Australian model suggests that doesn't work.

● (1805)

Prof. Mary Crock: That's correct.

Mr. Rick Dykstra: I'm still trying to come up with.... Certainly no one from the government side has said anything about this acting as a deterrent.

If you've heard from other parties or other folks in the country that may not like this piece of legislation, that's one thing, but to suggest in any way, shape, or form that this is a method of deterrence is incorrect.

Prof. Mary Crock: Well, perhaps you could explain the central purpose of this. If protecting the immigration system is not about deterring people from abusing it, then what is it about?

Mr. Rick Dykstra: Actually, the purpose of detention is to ensure that before individuals go into Canadian society we have an understanding of who they are and whether they are qualified refugees or in fact they are not refugees. As we found with the *Sun Sea* and the *Ocean Lady*, people aboard those ships were actually war criminals or terrorists.

Part of it, from our perspective, is the importance of identifying individuals who are claiming refugee status and understanding who those individuals are and what their past is all about. It's an issue of safety.

Let me be clear. In the last decade this has made up less than 0.5% of what our refugee system is all about. When we talk about a refugee system overall—you pointed it out, and I'm proud to hear that even as far away as Australia, Canada is considered to have one of the best refugee and immigration systems in the world—it doesn't mean that we are fixed or we shouldn't be improving it.

Part of the problem is that less than 40% of those who apply for refugee status actually achieve that refugee status in the country. The system itself is so broken that it takes upwards of two and a half years on average to get an initial response to a refugee claim.

We have individuals who lose their refugee cases after three or four sets of appeals. They've spent seven or eight years in this country. They get married here, have children, purchase homes, have jobs, and they're forced to go back to their country because they've failed to qualify as a refugee. Our system is such that we need to fix it.

We just had a witness from the embassy who acknowledged that Hungarians in the thousands were coming to Canada because it was an easy system to take advantage of. The list of what is required to be humanitarian doesn't include that we're easy to take advantage of, that the rest of the world sees us as easy pickings.

Under C-11, which you'll hear some of the opposition members indicate is being replaced by C-31...but clearly 70% to 85% of C-31 is actually what C-11 manufactured. Within C-11 is an additional 2,500 refugees who are coming to this country, of which 2,000 are privately sponsored and 500 are government sponsored. That puts us in the top two or three per capita in the world.

Our system needs to be fixed. It needs to be set in order; it hasn't been in many years, almost decades. But at the same time we still want to maintain—and I hope you understand this government's intention as far away as Australia—the integrity of that system and in fact ensure that it remains one of the best systems in the world.

Prof. Mary Crock: Yes. Well, thank you very much. The language you're talking, though, is very much the language of deterrence.

I understand. I've spent a good deal of time in Canada. I have, in fact, been involved very closely with the refugee determination system in Canada, so I'm very familiar with it.

Mr. Rick Dykstra: The next time you're in Canada, let's get together, because you clearly need to understand our position on this issue and where we're moving.

Thank you.

The Vice-Chair (Ms. Jinny Jogindera Sims): Could we please let the witness...? She hadn't finished yet.

Mr. Rick Dykstra: Oh, I'm sorry.

The Vice-Chair (Ms. Jinny Jogindera Sims): She was mid-sentence. If you could have patience, it would be appreciated.

Mr. Rick Dykstra: Sorry. I thought she was finishing up. I apologize.

The Vice-Chair (Ms. Jinny Jogindera Sims): Please, Ms. Crock, finish your thoughts.

Prof. Mary Crock: I understand your frustration, and I've observed this for many years. The problem is there is a difference between detaining people for the purpose of working out whether they are going to cause a threat to the country and mandatory detention, which, frankly, becomes punitive.

If you want to talk about how to better protect your migration system, I'm very happy to do that. What I'm trying to say to you is that temporary protection is only going to increase the number of asylum seekers you get, not decrease it. Detention is not going to deter or stop any of the practices that you're talking about. What will, if you're interested, is looking at the sources, where people are coming from.

My problem with this is that people think they can make quick-fix solutions to a very complex question. The only people you're going to convince of this, I think, are your constituents, who want to see you doing something. I don't think it will have an impact. Sorry.

● (1810)

Mr. Rick Dykstra: I'm sorry you feel that way, Mary.

The Vice-Chair (Ms. Jinny Jogindera Sims): Mr. Dykstra, you have six seconds. Actually, you have three now. You're done.

Mr. Rick Dykstra: The chair has used my time to indicate that I have no time left. Very nice.

Thank you.

The Vice-Chair (Ms. Jinny Jogindera Sims): I apologize.

We will move on to our next parliamentarian, and that is Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: Thank you, Madam Chair.

Good afternoon, Ms. Crock.

Ms. Mary Crock: Good afternoon.

Mrs. Sadia Groguhé: The current debate and the testimony we have heard so far make me believe that the way we treat our refugees today should be a sign of progress for our civilization, not a step backwards. In a vast country like Canada, we have the moral obligation to make that happen and to lead by example.

I would like to make sure that you actually made the following remarks. So I would ask that you give me short answers.

You said that mandatory detention affected the whole fabric of society in Australia. Is that correct?

You may make some comments if you need to, but please be quick.

Ms. Mary Crock: Could you repeat the question?

Mrs. Sadia Groguhé: You said that mandatory detention affected the whole fabric of society in Australia. Is that correct?

Ms. Mary Crock: It is difficult to answer that question in a few seconds. I will simply say that mandatory detention led to wrongful imprisonment and, as a result, to riots.

[*English*]

For example, racial riots were very much world news when they arose and they were the same groups of people.

[*Translation*]

I apologize. I don't practice speaking French enough, but I am doing my best.

In a nutshell, the situation was in fact detrimental to the society.

Mrs. Sadia Groguhé: Okay.

You also said that the measure had not deterred people from coming to Australia by boat or otherwise. Is that correct?

Ms. Mary Crock: Yes, it is.

You can see the number of asylum seekers and irregular immigrants.

Mrs. Sadia Groguhé: In addition, that measure resulted in huge costs. Is that so?

Ms. Mary Crock: Yes, the costs were huge, unprecedented, right from the beginning.

Mrs. Sadia Groguhé: Okay.

Ms. Mary Crock: In a situation like that, you have to build prisons, right? The problem with this piece of legislation is that it is so vague that it does not only deal with

[*English*]

irregular maritime arrivals.

[*Translation*]

Given the terms used in it, it could easily apply to other people as well. It is too vague.

Mrs. Sadia Groguhé: Very well.

In addition, you said you were disappointed to see that Canada wanted to introduce legislation that will violate human rights and the rule of law. Is that correct?

● (1815)

Ms. Mary Crock: Yes.

Mrs. Sadia Groguhé: Could you please briefly expand on that?

Ms. Mary Crock: There are international laws and the laws of the land, the charters.

Mrs. Sadia Groguhé: Absolutely.

Ms. Mary Crock: Detentions are forbidden. Detaining a person has to be justified.

[*English*]

This is terrible.

[*Translation*]

Mrs. Sadia Groguhé: Very well.

You have also expressed concern about the fact that nothing was in place to ensure that children stay with their parents. Is that correct?

Ms. Mary Crock: Yes, that's right.

Mrs. Sadia Groguhé: Could you comment on that and provide us with some examples of the ensuing consequences, please?

Ms. Mary Crock: There are so many stories like that in Australia. Very young children have been damaged, permanently perhaps, because of detention and being separated from their parents. A great deal of literature has been written about that.

Mrs. Sadia Groguhé: Very well.

Even after the legislation was passed in Australia, the number of asylum seekers continued to increase. What are the reasons for the Australian legislation failing in that respect?

[*English*]

The Vice-Chair (Ms. Jinny Jogindera Sims): Madame Groguhé, your time is up.

Mrs. Crock, your French is truly amazing. The fact that I had this piece in my ear really helped. I really want to commend you for your French.

Now we're going to move on to our next—

Prof. Mary Crock: Could I just say very quickly—

The Vice-Chair (Ms. Jinny Jogindera Sims): Unfortunately, we have very tight timelines, and I have other parliamentarians who have been very patiently awaiting their turns.

We're now going to go to Mr. Menegakis.

You have five minutes.

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

I want to welcome you, Ms. Crock and Mr. Ghezelbash.

I had a series of questions for you, Ms. Crock, but before I do that, I want to preface it by making a couple of comments. I was a little taken aback by some of your commentary as to the motivation our government has in introducing this legislation, particularly living so far away from our beautiful country here in Canada, and you're there in your beautiful country of Australia. Certainly, I believe you need some more information so that you can be better informed.

You commented that the reason we're proposing this bill is simply to tell the Canadian people that we are doing something. There are some realities that we're dealing with here as a government, I'm sure not dissimilar to some of those that you are experiencing in your country of Australia.

Currently, it takes 1,038 days to finalize a refugee claim. These are people who come into the country—I'm talking about the legitimate people—from their own country, where they faced persecution, torture, and possible death, and it takes 1,038 days for their refugee claim to be processed. With the measures in this legislation, that can be reduced to as low as 45 days from designated countries, or 216 days for all other claimants. Surely, you will understand, as we all do, that spending 20% of the time in the system before your application is finalized and you are welcomed into our country is a lot better than spending 1,038 days. That is a big concern of ours.

We also have a phenomenon where about 95% of the claimants come from European Union countries. We're talking about democratically elected European Union countries; there are 27 of them. If somebody has a problem in their country, you would think their first choice would be one of the other 26 around them. But they come to Canada, and yet 95% of them abandon their refugee claim after they've made it and they've received all of the very generous benefits that our country provides for them. That abandonment and clogging up the system costs our country $170 million a year.

I might add that perhaps a bigger cost than that, if we want to look at the compassionate and human side of this equation, which is really our motivation in looking at this, is that legitimate people, who have a bona fide reason to escape their country of origin, are left waiting in the system because our law says that every single one of those applicants needs to be looked at on an individual basis. It's clogging up our system.

The parliamentary secretary to the minister of immigration, Mr. Dykstra, mentioned two ships that came here illegally, the *Sun Sea* and the *Ocean Lady*. After the due diligence was done, it was found that 23 people on those two ships posed security risks for our country, and another 18 people had perpetrated war crimes in their country of origin. This is from the legal authorities of our nation. They were found to be risks. That's a total of 41 people. I am sure that you, as law-abiding citizens in Australia, can surely understand that you would not want people who are security risks or had perpetrated war crimes elsewhere living in your neighbourhoods, living around your children, living around your families.

● (1820)

The motivation for this legislation goes a little further, and perhaps to the core of what every government's responsibility initially is, and that's to provide safety and security for its citizens. Certainly, we cannot allow people into our country without detaining them and not even having had the opportunity to ascertain the validity of their claim of refuge and whether or not they can pose a security risk to law-abiding Canadians.

These are the real motivations behind our legislation, and the legislation—

The Vice-Chair (Ms. Jinny Jogindera Sims): Sorry, Mr. Menegakis, but your time is up.

Mr. Costas Menegakis: I'm glad I had an opportunity to tell you that, because perhaps I will change your view.

Thank you so much for being with us.

The Vice-Chair (Ms. Jinny Jogindera Sims): Thank you very much for your statement.

Now we have Mr. Opitz for five minutes.

Mr. Ted Opitz: Thank you, Madam Chair.

I'm going to actually carry on where Mr. Menegakis left off. I have to say, ma'am—and I do welcome you here and thank you—that I find your views to be incredibly cynical. It kind of leaves me with an apocalyptic view of Australia, because I don't think things are that bad. I certainly don't believe that we're doing this to satisfy constituents; I know I'm certainly not. This is the right way for our country to go.

I'm a product of immigrants who came here after the Second World War. I grew up in an immigrant area. I understand a lot of those issues. Many of those were refugees, in their day, at the time.

We do have a right, first of all, to defend our borders, to make sure that the people we want to come to this country come here. We are a compassionate country. We welcome refugees, especially if they're legitimate refugees. We do have a number, a huge number, who are bogus refugees. As I think Mr. Menegakis mentioned, about 95% of those claims get abandoned. And we did have an official from the Hungarian government here today talking to us about that, and he had some interesting things to say.

There are a lot of security risks—and that's a lot of my background—and on these ships we have had security risks. We have had war criminals. In a lot of those events, people of that nature tend to hide in groups and try to slip in that way. But this also lends itself to trafficking and smuggling incidents. Sometimes both sort of morph into one another. People are smuggled in, but oftentimes they are then required, once they make it to Canadian shores, to pay these guys back somehow. There are invisible chains placed on them, as there are for people who are trafficked for more nefarious things, like prostitution, drugs, and other things. We also have an obligation to those people reaching our shores to make sure they are protected if we can identify them.

The tension here is to hold people to ensure that we know who we're letting out into the Canadian public. You wouldn't let somebody into your door, into your house, in with your family, without exactly knowing who they are. That same principle applies to our countrymen. We're not going to allow people to enter Canadian public life and integrate before we are absolutely 100% sure who they are and that they pose no threat or risk to the Canadian populace. That is a responsibility that we have as a responsible government, to make sure our citizens are safe.

Eventually, once claims are proven and approved, people do get to come into this country. They do get to live within their communities. They do get to integrate and build lives. And we depend on that. We're talking a lot about refugees, but immigration is an important part of our country. We need it. We are a massive land mass and we need the people. We have jobs and areas in this country that need to be filled.

We have very important programs with our provincial partners in the provincial nominee programs and with other stakeholders that are helping us, including employers, to look at how we can better manage the immigration system to bring in people, get them to this country very quickly, get them to their jobs very quickly too, so that they're not floating and they can become productive very quickly. That is a huge satisfier to those people coming to this country.

We're improving that system all the way along, including foreign credentials recognition. We don't want doctors, engineers, and nuclear physicists driving taxi cabs. We want to make sure that when they come to this country they are contributing very heavily within their own trade. We want to make that fair, so they can get Canadian accreditation and get into those jobs and trades here.

That's largely—

Mr. Kevin Lamoureux: A point of order—

● (1825)

The Vice-Chair (Ms. Jinny Jogindera Sims): By my Blackberry it is 6:26.

Mr. Kevin Lamoureux: Not to take the last 34 seconds away from the member, but I do have a point of order.

The Vice-Chair (Ms. Jinny Jogindera Sims): We have stopped the clock.

Mr. Kevin Lamoureux: Yes, on a point of order, Madam Chair, I appreciate the fact that our witnesses are from Australia. My understanding of the committee process is that when we get witnesses coming before us, we afford them the opportunity to answer questions that might be posed. It sounds like we've been getting more of a seven-minute lecture, because the government side doesn't seem to—

The Vice-Chair (Ms. Jinny Jogindera Sims): The chair is going to rule that we're going to proceed. Mr. Opitz has the floor. It's his five minutes, and he can use those five minutes as long as he's respectful toward the rest of us.

Mr. Ted Opitz: I am, Madam Chair. You are all my colleagues and my friends. We're all trying to do a job here.

I did want to ensure that Madam Crock understood our views on this side of the table as to what our motivations are to helping to improve this system, to make it fairer, much more humane, much kinder to people coming to this country. At the end of the day, that is what we want to do. This has been a compassionate, generous country, and we will carry on in that tradition.

I think my time's up.

The Vice-Chair (Ms. Jinny Jogindera Sims): Thank you very much.

We're going to go to Monsieur Giguère.

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): Thank you very much.

Presently in Australia do you preserve the concept of habeas corpus inside your immigration law?

Prof. Mary Crock: Yes and no. We still have mandatory detention. Children are not supposed to be detained, but they are. We still have the concept of habeas corpus, yes.

Mr. Alain Giguère: Here is a second important question. If you preserve in your constitution...and there are differences between your immigration law and your constitution. Does your constitution declare your immigration law ultra vires, or do you have important legal contestation?

Prof. Mary Crock: Yes. I should explain that Australia does not have a bill of rights. Our constitution does not guarantee habeas corpus in that sense. In fact, we have one of the only high courts in the world that has ruled that it is permissible to detain non-citizens for the term of their natural life. There is nothing under Australian constitutional law that prevents it. Perhaps that's the question you were asking. We are quite different from Canada in that respect.

Mr. Alain Giguère: This is my last question. What is the position of your Australian Human Rights Commission in regard to mandatory detention?

Prof. Mary Crock: Our Human Rights Commission stands very strongly against the practices we in Australia have engaged in. I think I would be safe to say it would agree with most of the comments I've made today.

● (1830)

The Vice-Chair (Ms. Jinny Jogindera Sims): Thank you, Mrs. Crock. I want to thank both you and your colleague for having woken up so early to be witnesses before this parliamentary committee. I know that by the time you came on it was 7:30 a.m. As we were enjoying our dinner, you were still looking forward to your breakfast.

Thank you very much for coming and presenting before the committee.

Prof. Mary Crock: Thank you very much.

The Vice-Chair (Ms. Jinny Jogindera Sims): The meeting is adjourned until tomorrow.

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