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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (1535)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I will call the meeting to order. This is the Standing Committee on Citizen and Immigration meeting number 41, on Monday, May 7, 2012, pursuant to the order of reference of Monday, April 23, 2012, Bill C-31, An Act to amend the Immigration and Refugee Protection Act and other acts. This meeting is televised.

We have the first panel here this afternoon.

Mr. Perchal, good afternoon. How are you? You have been here before for security, if I recall—

LCol Walter Perchal (Program Director, Centre of Excellence in Security, Resilience, and Intelligence, Schulich Executive Education Centre): I have. That's correct.

The Chair: You're with the Centre of Excellence in Security, Resilience, and Intelligence at the Schulich Executive Education Centre. With you is Donald Loren.

Finally, from the Privy Council Office, we have Mr. Ward P. D. Elcock, special adviser on human smuggling and illegal migration.

Good afternoon to you. I understand, Mr. Elcock, that you do not have an opening presentation.

Mr. Ward Elcock (Special Advisor on Human Smuggling and Illegal Migration, Privy Council Office): No, Mr. Chairman, but I am happy to answer any questions.

The Chair: Sure.

Then, Mr. Perchal and Mr. Loren, you have up to 10 minutes.

LCol Walter Perchal: Thank you, Mr. Chairman.

Chair and members of the committee, we are most grateful for the opportunity to appear before you.

Our point of departure for our presentation today comes from our involvement in the Centre of Excellence for Security, Resiliency, and Intelligence at the Schulich School of Business at York University in Toronto. However, for the record, our comments are our own.

Clearly, our current immigration policy has significant issues. As per the official record, some two-thirds of our current refugee applicants are found to be, by Canadian standards, inadmissible to Canada. However, the time between arrival and determination is not only a costly exercise to Canadians, but also a largely inefficient one, inasmuch as national interests are harmed, and legitimate claimants are adversely affected by this state of affairs.

The overriding fact of the matter is that the majority of people landing in Canada—excluding the majority of those travelling from the United States—either as legitimate visitors or as refugees are currently a product of a system that is based on discretion, intuition, and often by the determination of foreign nationals working for our embassies abroad. They are not, as the Auditor General observed, people vetted on the basis of sound, shared Canadian intelligence that would pre-screen any of those who potentially represent either criminal or security threats to this country.

Put simply, we do not have an elegant intelligence interface that allows us the benefit, in the age of information, of information that is the product of multiple vetted sources made available to those in our government who need it as the basis for sound decision-making.

In addition, those individuals within government who have an understanding of the differing sources of intelligence and how best to leverage these assets to not only support sound immigration policy, but also how to further our collective national interests, are often prevented from developing and implementing the necessary policies and initiatives. Accordingly, current policy is reactive rather than proactive.

As a result, individuals who represent various levels of threat to our national interests increasingly burden Canadians. Further, some of these individuals further threaten another critical interest and relationship, that of our neighbours and friends to the south. I would like to recall to members of the committee the damage done to our national interest by the mere perception in the United States, post-9/11, that a number of terrorists had come through Canada. What if our current policies lead to real threats to our friends and neighbours to the south? Might we not expect a significant tightening of what is effectively a critical component of our national economic interests? Might we not also expect other measures in what we have proudly seen as the world longest and oldest undefended border?

In the 21st century, the age of information, we need to force multiply and force protect our national interest by an aggressive and effective application of intelligence. In a time when a single individual can make war upon the planet, this is fundamental to our national interests. But, again, our interests are not limited to ourselves. Because we share a continent with a country that has been targeted by many and suffered much, we also need to think about our continental responsibilities.

With a view to that, I should like to give the remainder of our time to a great friend of Canada, Admiral Donald Loren. We have asked him to give you the benefit of his thoughts on these matters from an American perspective.

RAdm Donald Loren (Faculty, Centre of Excellence in Security, Resilience, and Intelligence, Schulich Executive Education Centre): Thank you, Mr. Chairman, and honourable members of the committee. Thank you for inviting me here today.

I am honoured to be a great friend of Canada and a senior adjunct faculty member at the centre of excellence.

It is at my colleagues' request that I have joined them today to appear before you. In their view, my work at the U.S. Department of Defense, as Deputy Assistant Secretary of Defense for Homeland Security Integration, and my work with the Director of National Intelligence, as the director of operations at the National Counterterrorism Center, is particularly related to the matters that you're going to discuss. It gives me certain insights that might be of benefit to your thinking on your way ahead.

I'm not here to address Canadian law in specific. As an American, it is not my place to do so. Rather, I am here to offer my perspective, as testimony, with a view to addressing your questions on how you are defining your own interests in the legislation. Certainly we all find this of interest, inasmuch as we do share the continent, and issues in either of our countries can quickly become important to both nations.

Clearly, a significant terrorist event will not be deterred by the longest undefended border in the world. A major attack would not, as it has been demonstrated in the past, be limited by borders, as evidenced by the death of 24 Canadians in the horrific events of 9/11. And it would not be inappropriate to single out singular events of impact alone when discussing this subject matter. What must also be considered are the policies and the legislations that address the ever-changing issues we face globally today, particularly where the threat spectrum continues to grow on an exponential basis.

You will recall how during 9/11 you assisted so many of my fellow Americans in accommodating landings of aircraft in your country. What this single event demonstrated is that we share the consequences of being neighbours. Therefore, within that context, we are concerned not with the legitimate traveller or the legitimate immigrant, but rather we are concerned about those who would threaten either of our countries, threaten our citizens, threaten our values, and threaten our interests.

In the 21st century, where transnational crime and terrorism pose substantial and increasing threats and risks, we cannot underestimate the impact of a single individual. What is worrisome for both of our countries is that the growing nexus between criminality and terrorism force multiplies the threats we currently face.

The degree to which we can be proactive is the degree to which we shall both succeed or fail as we face the challenges that lay ahead. Therefore, within that context, the challenges that both Canada and the United States face with respect to border security and immigration can only be resolved through both nations working together as we have done in the air and missile defence of North America through NORAD.

The key to working together will be to ensure that not only are the policies and programs that are implemented by both nations in alignment, but each nation is comfortable with the measures that are in place to address the customs and immigration challenges. In my professional experience, I can state that addressing these challenges is not only about ensuring that the necessary equipment and resources are in place but equally, if not more important, ensuring that the intelligence and law enforcement information upon which decisions are based is sound.

For example, biometrics is often presented as a potential solution to solve many of the immigration issues we both experience, but it would be naive to believe that implementing expensive technical solutions without the necessary intelligence to inform the technology is the sole answer. It is akin to buying the most expensive computer available, but not purchasing an operating system that it can use.

Canada's membership of the Five Eyes provides access to significant amounts of information that can be used to better assess the potential risks posed by individuals attempting to enter the country, but this information must be readily available to the appropriate decision-makers and shared across agencies, something that both of our nations can do much better.

But even if the information was made available and utilized properly, there are secondary and tertiary concerns that must be addressed before courses of action are undertaken. For example, the security and assurance of the information must of course be protected.

● (1540)

This means it is paramount that the infrastructure and architecture of the security intelligence apparatus used creates a level of confidence amongst Canadian allies in order to have a more open flow of information.

The strong relationship between Canada and the United States must always consider political dynamics that face our respective countries, as these same political dynamics could have a significant impact on moving border initiatives forward. A mutual respect and understanding of the political winds of both countries should be considered when any course of action is taken, thus ensuring there are no misconceptions or misunderstanding among nations.

The United States works hard to ensure that its border, immigration, and security policies are correct, in the same way that Canada works hard at these very same issues. Our nations have built our relationship on trust and mutual cooperation, and that should continue to be the case.

In closing, both the United States and Canada have talented security and intelligence professionals to perform the work that lies ahead. These people exist both within and outside of our respective governments, and it should be a priority of government to engage these professionals and use to the fullest capacity the sound knowledge and practical solutions they offer to the security problems our nations face together.

Thank you.

The Chair: Thank you, Admiral Loren and Mr. Perchal. Thank you for your presentations.

Mr. Elcock, I know there will be questions.

Mr. Opitz is first.

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

First, thank you all for being here today. I know you're all experts in your field, and we're delighted to be able to pose questions to you on Bill C-31 and related topics.

Admiral, I'd like to start with you, and I'm going to talk a little bit about detention biometrics and some of this information-sharing you talked about.

Then I'll turn to Mr. Elcock and talk a little bit about smuggling and trafficking, sir, if that's okay.

Admiral, you mentioned the sharing of data between allies, specifically in this case the United States and Canada. As Colonel Perchal pointed out earlier, it's clearly important that we make sure our shared borders are secured.

I'd like you to describe in a little more detail, sir, some of the things you were just describing about information-sharing, perhaps in the context of entry/exit protocols.

● (1545)

RAdm Donald Loren: Certainly.

First let me say that information sharing amongst our nations continually improves and is at a very high state. I know I, for one, worked very closely with ITAC when I was at NCTC, worked very closely with the Canadian defence forces at the Department of Defence.

But what I was alluding to, sir, is much, much broader than the information-sharing amongst nations. I think we're pretty good; we have lots of room for improvement, but there are vehicles in place. And there's a tendency to certainly treat the members of the Five Eyes and certainly our relationship with Canada as a very important and very special relationship where information-sharing is part of the norm.

I'm actually talking about not only amongst our nations, but internally amongst our own agencies within our own countries, and respectively amongst those agencies. For us in the United States, information-sharing has gone much further than the foreign intelligence of the past and it now butts directly against law enforcement intelligence.

Of course, as you know, as you are very sensitive to that, we are very sensitive in America to ensuring a distinction between foreign intelligence and law enforcement intelligence and information, because we will never have the federal government, and the military, and our homeland defence apparatus using intelligence against American citizens. We try to protect those rights and work very hard at it. That in itself creates a very convoluted system of sharing information among agencies and among law enforcement and intelligence agencies as well.

Case in point: when we talk immigration, one of the things we must consider, of course, is health and medical. I can't speak for Canada, but I would submit to you that we have lots of room for improvement in the United States in the ability to bring our immigration services in line with our health and human services and our centre for disease control, many of the areas that have to come into contact with each other, to ensure that we are protecting the nation against...whether it just be natural occurrence of people with various diseases transmitting globally in a much smaller world that we face today, or, quite honestly, if you get somewhat science fiction about it, perhaps a specific threat of spreading disease throughout the world, the hemisphere, the North American continent.

My point is that we have to work together as a nation and we have many of those vehicles in place. We have to work internally within our respective nations, and then we have to ensure that information and intelligence are shared appropriately across all those interfaces—while protecting sources of information, of course.

Mr. Ted Opitz: How does biometrics factor into all of this?

RAdm Donald Loren: I don't consider myself an expert in biometrics, per se, but we have to realize that biometrics is along a line of progression where perhaps we were with fingerprints or photography or dental or DNA testing years ago. This is a continuum, and we have to be able to develop our processes, our methods, our CONOPS, if you will, to evolve, as the technology and the state of the art develop so we can use that to confirm identity management.

We have all seen again in this age of Print Shop and electronic manipulation of the tools we have available to us that it is important not only that you identify yourself—just as I showed a passport for entry into this building—but that you positively prove that the person whose identity record you held in your hand, who appears to be you, is in fact you. So we have to continue to develop those capabilities.

Mr. Ted Opitz: How much time do I have, Mr. Chair?

The Chair: You have two minutes.

Mr. Ted Opitz: Okay, great.

I'm going to move to Mr. Elcock, because I wanted to get into the smugglers and traffickers.

Mr. Elcock, I know you have a lot of expertise in this. I'd like you to describe some of the tactics that smugglers and traffickers use to try to get into this country and some of the threat that this actually has towards Canada. Clearly we have a right to defend our borders, and we have of course a need to defend our citizens and our safety and so forth.

Sir, can you describe how smugglers and traffickers actually try to access our country? This could also include the dot-dot-dot to terrorism.

● (1550)

Mr. Ward Elcock: Mr. Chairman, that's a bit of an open-ended question in the sense that what they're prepared to do depends to some extent on what we put in the way. Anything we put in the way they will seek to get around. That's the normal.... It's why the Income Tax Act used to be about this thick and is now about that thick. Human ingenuity being what it is, people will look for ways to make a profit even out of illegal activities.

In terms of human smuggling, which I would distinguish from human trafficking—they're not necessarily the same thing, although they may cross at some point—the reality is that we have seen in Canada over the last few years attempts in particular by Tamil ventures to smuggle Tamils to Canada by vessel. That, essentially, is assembling a bunch of passengers willing to pay sufficient money to come to Canada by a somewhat decrepit vessel, braving the Atlantic or the Pacific to come to Canada. There have been two earlier occasions and an earlier exodus back in the 1980s, but in the last three or four years—

The Chair: We're way over, Mr. Elcock.

I'm sorry, but I have to watch the clock.

Ms. Sims.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Thank you very much, the three of you, for coming to spend some quality time with us.

I think all of you will be aware that just a year ago we adopted Bill C-11 and the components of Bill C-11. Also, I think it has been very clear as we have questioned both staff and others that the key elements from Bill C-11 have not been implemented yet, so we actually don't even know whether we really have a problem.

Bill C-11 is called the great compromise. The minister and our critic of the day, Olivia Chow—and I'm sure Mr. Dykstra was involved in it as well—all talked about it being a great piece of legislation, because it brought all the elements together and there was a lot of agreement. It seemed to address the key issues arising from boatloads of people coming to B.C.'s shore, the two boats.

I have to say that most of those people—as we know, even before Bill C-11—have been accepted as refugees. Refugees very rarely stop to think, especially if their lives are in danger and they've had the kinds of persecution they've had, about the dangers of the seas, because they're in a corner and they have to escape. They're worried about their lives, limbs, and their families, and all of that. They came to our shores, and as we know, a vast majority of them have been accepted as legitimate refugees.

In Bill C-11 Canada also has, I would say, some of the strongest sentencing for human smugglers. Really, in Canada we can't go greater than life imprisonment, because we don't have the death penalty in Canada, and I'm not hearing anybody from either side say that it is where we want to go. So we already have the strongest deterrent possible for smugglers, a life sentence and also $1 million in fines.

But as you know, smugglers are very sophisticated operatives. I often say that while we're chasing the victims, they're probably sitting—and I don't mean to malign New York—in a New York side street café drinking lattes and wearing their Armani suits, for all we know.

Yet it's the victims I want to focus on here, because I believe Bill C-11 already has very strong punitive measures towards smugglers. I also recognize the fact, and I would say many experts do, that smuggling is an international problem—it's a curse across the world—and it needs to have governments working together to address it in a way that targets the smugglers, not the victims again.

The other aspect of Bill C-11 is the detention part. Bill C-11 allows detention of people, but not just for a year; they can even be detained longer, for identification and for security checks. But what's different about Bill C-11 is that periodically you have to go back and justify why you want that extension.

So as far as detention goes, I think it's already covered, because the minister, even under the current system, has been able to keep some people in detention for far longer than this; whereas with this new piece of legislation, all the irregular arrivals would end up in detention. Notice a marked difference from where Germany is, as we heard in earlier testimony as well.

The other concern, when I look at all of this, is over the detention. My colleagues across the aisle have sort of said, “Yes, but the minister....” That's another concern we have: there is too much power in the hands of a minister.

It's not because it's this minister; I would have concerns about a minister of any stripe having that much power in individual hands. What we're seeing is more and more of that power being centralized and therefore losing some of the objectivity that you count on when you have a panel of experts, say, or others.

● (1555)

One of the other things we're hearing a lot about is cost. Well, I can tell you that the cost of detention is very, very high. I have often said that if we were willing to spend even one-tenth of what we're prepared to spend on detention for youth...in my previous life. We would not have the need to have that many detention places if we were willing to spend one-tenth on education, on prevention programs, and a lot of those things.

But in this case, the cost for detention for a year...? This is for everybody who comes here in an irregular way in a group of more than two—except for families, and I appreciated that clarification this morning. We really have to take a look at that as well. Surely this can't be another prison-building agenda when we look at where we want to go with our refugee policy.

One of the other concerns we've had raised by quite a few witnesses of all stripes is the timelines and the kind of charter challenges that could be opened because people are not being given due process.

Other countries that have taken these kinds of measures of mandatory detention are actually moving away from them. Here we are in Canada, a progressive country; instead of learning from the mistakes of others, we have a tendency in the last little while to want to copy the mistakes of detention.

Thank you.

The Chair: Thank you.

Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Thank you.

I appreciate all the presentations, but this is specifically to Mr. Elcock.

You'll have to excuse me for not necessarily knowing; as a special adviser on human smuggling and illegal migration, who do you report to?

Mr. Ward Elcock: It's to the national security adviser.

Mr. Kevin Lamoureux: Our current system has a detention component to it. Has our current system failed to detain individuals who are important for us to detain?

Mr. Ward Elcock: I think that question would probably be better addressed to some of the other agencies, such as CIC or CBSA. Frankly, my job is more to the point of trying to prevent smuggling ventures from succeeding rather than what happens when somebody arrives here.

Mr. Kevin Lamoureux: Right. So where you do your best is not necessarily within Canada; it would actually be abroad. Would that be a fair assessment?

Mr. Ward Elcock: For my part of the job, yes, Mr. Chairman. It's really a focus on working with other countries, working with our intelligence and enforcement agencies to build a picture of what we should be looking at, and then working with other countries and other international organizations to stop vessels from departing, stop ventures from departing.

● (1600)

Mr. Kevin Lamoureux: So if the Government of Canada wanted to get aggressive and start dealing with profiteers and human smugglers, our best bang for the buck, then, would be to be looking at working with other governments and other agencies abroad in order to prevent, for example, ships from being able to come to Canada. Is that a fair assessment?

Mr. Ward Elcock: I don't think it's an either-or, Mr. Chairman; I think you have to do some of both. Clearly you need the right policies and laws in place to manage your sovereignty and your borders, but you also need the capacity, and need to exercise the capacity, to reach out and prevent things from happening.

Mr. Kevin Lamoureux: Now, would you be privy to any information in regard to this bill with reference to its potential constitutionality of mandatory detention, or can you provide any comment on the idea of mandatory detention?

Mr. Ward Elcock: Mr. Chairman, I'm a lawyer, but I don't try to give legal opinions in areas in which I haven't done any work, especially in the constitutional area, not since, I think, I left law school.

So you probably would be better to address that to somebody else.

Mr. Kevin Lamoureux: All right.

Admiral, maybe I can go to you. We had two ships in particular, the *Sun Sea* and the *Ocean Lady*. What I'm really referring to is the mandatory component. In those two ships—there were 492 people on one and 76 on the other—there were six to whom security issues were related to the degree that they felt it was necessary to retain them.

Does the U.S. refugee system have mandatory detention?

RAdm Donald Loren: Thank you, sir.

I am not aware of mandatory detention for the sake of detention or as part of a litany of actions that have to be carried out. Obviously we use probable cause, and if there is reason to take law enforcement action to detain a group, so that you can ascertain what their intention is. But I am very assured that the amounts of time we're talking about are considerably less than the lengths of time we're talking here, because unless you either bring charges against someone or in fact bring someone to arrest for reasons you have evidence to prove, we cannot take that type of lawful action.

Mr. Kevin Lamoureux: To the best of your knowledge, in terms of judicial oversight for refugees, would the U.S. have a system whereby all refugees are classified in a category in which they all are entitled to some sort of judicial oversight for detention purposes?

RAdm Donald Loren: Now we're getting a little bit out of my area of expertise, but I can sit here and say to you that one of the things we did is we brought immigration and customs, border patrol, and the United States Coast Guard together under the auspices of the Secretary of Homeland Security. One is so that we clearly recognized an agency that had law enforcement responsibility, because now we are talking about the law and taking legal action against people, and the ability to do that at sea, the coast guard, while maintaining our policies with respect to customs and border patrol security.

The bottom line is that we recognize that in the world we're facing today we have to take steps that bring together the establishment of policies and procedures to ensure that we are operating under the rule of law and that we afford all people the rights that go with human dignity and treat them fairly. If we have probable cause and then develop, through the course of investigation during the period of detention...or quarantine, as perhaps we called it in my country when we established Ellis Island over a hundred years ago.

Whatever you do to carry out those procedures, you want to make sure you give people the benefit of the doubt.

The Chair: Thank you, Admiral Loren.

Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair.

Welcome to our three guests.

I am going to start my first line of questions with Mr. Elcock, but I want to make a comment with regard to what Mr. Loren said.

You stated with regard to biometrics that it's kind of like what fingerprints were years ago, and it's a statement that.... We've had countless other witnesses say that we're actually bringing Canada in line with many other countries around the world that use biometrics, such as the U.K., Australia, the European Union, and New Zealand, etc. So I'm glad that you also said the same thing. I think we are playing a bit of a catch-up game right now.

Mr. Elcock, this question is with regard to biometrics or sources of intelligence. What do you think about our provisions in Bill C-31 with regard to that particular aspect in the bill?

● (1605)

Mr. Ward Elcock: You mean the particular aspect in terms of biometrics?

Ms. Roxanne James: Yes.

Mr. Ward Elcock: I think, as was pointed out, biometrics is clearly part of the evolution of being able to identify people and be certain of your identification. Frankly, I haven't done any recent work on biometrics. I know that in some cases there are some concerns about how fast the work on biometrics has progressed, but that was some years ago.

You're a little out of my subject area at this point for me to give you a learned comment on biometrics from A to Z.

Ms. Roxanne James: Let me tie that into your expertise and knowledge of the human smuggling illegal industry. With regard to human smuggling, do you believe that the use of biometrics will help you in your investigations in identifying people who are coming into Canada through mass arrivals or human smuggling? In many cases the people who are claiming refugee status on our shores are part of the human smuggling operation itself.

Do you believe the use of biometrics will help with the identification of such people if we have that information available?

Mr. Ward Elcock: In theory it should help. However, most of my job is to try to prevent people from even getting here or prevent ventures from getting here. I'm working one level ahead of that. Hopefully they won't depart.

Ms. Roxanne James: Perhaps I could ask one of the other two gentlemen if they would like to comment on that as well.

Do you believe it will help in the investigation of human smuggling operations?

RAdm Donald Loren: If I may, I think it's important, as we look into how the nature of the security environment we find ourselves in has changed—unfortunately, asymptotically—and how we are talking about transnational actors, independent actors, in a very complicated environment....

The fact of the matter is that we have to bring to bear all the tools we can to address the problem. Just as my colleague said here, we have to recognize that the start is at the point of debarkation and there's a continuum that takes place all the way through the point of landing. We have to be prepared to address that.

I might point out that one of the things that I have been concerned with, of course, is the close tie between all forms of illicit trafficking and the eventual smuggling of components or weapons of mass destruction.

Ms. Roxanne James: Let me ask this question. Currently in the provisions in Bill C-31, where it only requires biometric data to be collected from people coming to Canada temporarily, do you believe this should be expanded to collecting data from anyone who isn't a Canadian citizen who is applying to come to Canada?

Again, for safety and whatever else with regard to the Privacy Act, biometric data would be, obviously, disposed of once they became a Canadian citizen. But instead of just people who are coming to Canada temporarily, do you believe it should be expanded to include people who are applying to come to Canada in general?

It's just an opinion question. I'm not sure if anyone has the expert knowledge; I'm just looking for an opinion.

RAdm Donald Loren: I'm going to fall back on my position that it's not my place to comment on the provisions of your law that you're considering. I will sit here and say to you, though, that we have to work through, both from a legal perspective and an operational perspective, all the processes that are available to us to help get our arms around the problem.

I would point out that 100 years ago or more, some people considered taking a photograph, capturing your spirit, an intrusion. These are things that constitutional lawyers and people who have to address these types of things are going to have to sit around and determine. As science and technology changes, as the threat changes, how do we keep pace with that and yet respect human dignity and the rights of the individual, which both our nations are very proud of?

Ms. Roxanne James: Thank you.

[*Inaudible—Editor*]...so a fairly short answer from maybe one representative from both groups.

The Chair: You have time for one quick question and one quick answer.

Ms. Roxanne James: Okay.

How can Canada better improve our immigration screening process? It's not a long answer. I just want to know if you have something specific that you would suggest, and maybe one of the other gentlemen as well can answer.

A voice: [*Inaudible—Editor*]

Ms. Roxanne James: No, that's not one of the answers.

● (1610)

The Chair: Okay. We're going to move on.

Ms. Roxanne James: No answer?

The Chair: We're going to move on to Madam Groguhé....

Oh, you know what? Mr. Menegakis is right: that's the second time today I've done that.

The clock is not running, and you have another two minutes. I'm sorry.

Ms. Roxanne James: I'm going to make a suggestion that if there are any concerns with regard to the information I'm going to ask you to share with this committee, that we can actually go in camera and have the information discussed just amongst the committee.

I'm just wondering if you have any high-profile cases that you can share with us where you have caught serious criminals due to information-sharing with other countries. And if it's an issue of concern that it be in camera, we can certainly go in camera, have the guests in the back leave, and it would just be amongst my colleagues here in this committee.

Are you able to share any stories?

Mr. Ward Elcock: Stories?

Ms. Roxanne James: I don't want to say stories: high-profile cases.

Mr. Ward Elcock: Well, we have had some successes in stopping the smuggling vessels. There was one that was seized by the Indonesians last year called the MV *Alicia*, and one more recently in Africa that was seized by the Ghanaian government.

Ms. Roxanne James: Okay. Good answer. I was hoping for a little more detail, but I understand.

I just wanted to read something very quickly. It was in the *National Post* on May 2. It was discussing the cases with the *Sun Sea* migrants, and that another two have been issued deportation orders. I'm just going to read something, because it actually made my blood boil. It reads:

> The passengers paid $5,000 to $10,000 in advance and pledged to pay 10 to 20 times that amount if the ship made it to Canada, the ruling said, adding the organizers of the smuggling operation had made millions in profits.
>
> "He was aware that he and the other passengers paid enormous amounts of money, specifically to evade Canada's requirements for passports and visas," according to the ruling.

I stress the word "evade", because I think in many cases this is what is happening.

> "He was aware that the voyage intended to bring migrants to Canada illegally."

They were referencing one of the people who was being departed, part of, obviously, the human smuggling operation. I know your area of expertise is in that particular area. I think you actually said it already, or maybe Mr. Loren did, that human smuggling operations are becoming more sophisticated.

In your opinion, is that the case? And you mentioned one particular case where we were able to divert a ship from coming to Canada. Can you elaborate and tell us how many actual vessels you've stopped in the last number of years?

The Chair: You know, my problem is that I made up for my error in giving you an extra minute, and now we are at eight minutes.

So I'd like to move on. I'm sorry.

That's unless the committee agrees, and I have a feeling that.... No.

Go ahead, Madame Groguhé.

[*Translation*]

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

I want to thank the witnesses for being with us today.

One of the functions of intelligence services is to prevent acts that pose a threat to our interests and values, especially when it comes to the irregular arrival of foreigners.

What did you learn from the arrival that gave rise to Bill C-31, in other words, the situation involving the two boats off Canada's west coast?

[*English*]

Mr. Ward Elcock: I'm not quite sure what the point of the question was towards. Obviously, in terms of the introduction of the bill, many lessons were learned.

I think it was also learned that if we were going to be effective, we also had to add another string to the bow, which was prevention.

That's actually what my function is, mostly.

[*Translation*]

Mrs. Sadia Groguhé: If I understood correctly, you are taking action sooner, in other words, before irregular arrivals.

Could you tell us what methods you usually use?

[*English*]

Mr. Ward Elcock: Mr. Chairman, it's actually relatively straightforward. It's simply a question of trying to coordinate the various activities of a number of Canadian intelligence and law enforcement agencies to work with our international partners, whether that be countries in various parts of the world who also have an interest in their sovereignty and in their laws not being violated, and to work also with international organizations, such as the UNHCR or IOM, to deal with the problems of human smuggling.

[*Translation*]

Mrs. Sadia Groguhé: Very well.

You said you were not all that familiar with biometrics, generally speaking. But I would like to know which measures you think should be put in place to ensure that confidential information is protected and used solely as intended.

● (1615)

[*English*]

Mr. Ward Elcock: I think, Mr. Chairman, that question would be better addressed to the departments responsible for the policy—CIC, CBSA, and others.

From my point of view, I have worked with biometrics in the past, but as I said earlier, it's not a subject with which I have crossed paths in the last few years, and it isn't a key part of what we're trying to do. If we can prevent a vessel arriving, the issue of biometrics doesn't really arise.

[*Translation*]

Mrs. Sadia Groguhé: Okay.

The Canada Border Services Agency cannot predict how many people might be detained under the provisions of Bill C-31. In fact, there have not been any recent mass arrivals, like those involving the *Sun Sea* and the *Ocean Lady* vessels. Obviously the bill was not in force at that time.

As far as the proposed amendments to Bill C-31 go, do you think the safe country designation could help to identify so-called fraudulent refugees?

[*English*]

Mr. Ward Elcock: To be perfectly honest, Mr. Chairman, that again is going back into an area of policy responsibility that isn't directly mine. It would be better addressed to the other departments that are responsible for those policy issues.

My guess is that it will be, but again, as I was saying, my function is largely looking at the issues related to prevention of arrivals, which means that some of those questions really come after anything I've done.

So it would be better to address those questions to other departments, I think.

[*Translation*]

Mrs. Sadia Groguhé: I have no further questions, Mr. Chair.

[*English*]

Ms. Jinny Jogindera Sims: Do we have any time left?

The Chair: No. Well, you do, but it's not enough.

Ms. Jinny Jogindera Sims: Can we add—

The Chair: You can't ask a question in 15 seconds.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chair, but I believe it was Mr. Weston who was next. Maybe we gave you the wrong information.

The Chair: Mr. Weston.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): Thank you, Mr. Chair, and thank you, colleague.

A special welcome to Ward Elcock, a fellow Osgoode grad. Thanks for your help in keeping the peace in the 2010 Winter Olympics, much of which were in the riding that I have the honour to represent.

The NDP this afternoon, through my colleague Ms. Sims, raised the straw man of "prison-building agenda", as she said. I think that's characteristic of many of the issues that have been brought up. We've heard that time and time again in the House, and in fact no prisons have been built by this government, nor are there any planned.

Much of what is being objected to, in my assessment, falls into a similar category. We have serious intelligence concerns that you have raised.

Admiral Loren, you've talked about consolidating different branches in the U.S. experience in order to be more sophisticated. Our own minister came here and said, frankly, we're not prepared for the kind of mass arrivals that we have seen in recent times.

I'll address my first question to you, Mr. Perchal. Are we correlating our information on gang behaviour, criminal activity, with foreign intelligence on terrorism so that we can identify some nexus there—the word "nexus" has been used several times—for instance in the case of a country like Iran?

LCol Walter Perchal: I think that's a complicated question and a very long answer.

The short version I would take on this is, no, I think what we have is a problem common to many countries, and certainly one that we have. We have both systemic and cultural issues that keep information from being moved to the places it needs to be efficiently and effectively. I think ministries between themselves are reluctant to share information. Again, that's both systemic and cultural.

I think what we need in the age of information is more information-sharing. The caveat to this is that information has to be protected for the purposes of national interests but also for the purposes of the individuals themselves.

Are we doing this well? No. Are we sharing information well with our allies? No. Are we sharing some information? Yes.

I think, and this is a point we've taken previously, we are particularly burdened by the fact that as a Canadian policy what we have chosen to do is not push our intelligence-gathering forward. Most particularly, we have chosen as a matter of policy—and I'm not going to comment on that—not to have a foreign intelligence service that would leverage and facilitate more information to allow us to make assessments further afield rather than having to try to make assessments once people have landed on the ground.

● (1620)

Mr. John Weston: Thank you.

Do you think the biometrics aspect of this act will help us at least make progress in this area?

LCol Walter Perchal: I think biometrics is very much a way of the future. Biometrics is something a number of countries have adopted, and I think it's inevitable over time that biometrics are going to become a global standard.

I think the dilemma of biometrics is, again, the protection of information, the rights of the individual. Having said that, my own estimate, in a paper I've written for limited distribution, is that DNA is going to become the standard base for biometrics used around the world.

Now, that has some scary implications for some, and certainly it may...but we ultimately need a universal standard that allows us to understand what a document from one country means in relationship to the person who is representing him or her self. What is that standard going to be?

Mr. John Weston: Thank you.

Detention provisions are a controversial aspect of the proposed bill. Our minister and senior officials from the department have said that detention is there to help us show identification and screen against security risks.

Would either you, Mr. Perchal, or you, Mr. Elcock, like to comment on the necessity of doing that in the case of these irregular arrivals?

LCol Walter Perchal: My view on detention is that it's a function of risk. If there is a risk, if there is a perceived risk or there is a potential risk, you err on the side of caution. I said this in my earlier presentation, the first responsibility of government is the protection of the nation and its citizens. Again, if there is potential risk, you simply cannot allow that risk for whatever reason—be it reasons of terrorism, reasons of criminality, or, as Admiral Loren said, reasons of illness—to simply wander into the population at large.

Again, that is in the context of the provisions of law that ensure the rights of individuals, but clearly this is a risk-based decision.

The Chair: Unless Mr. Menegakis yields, your time has expired.

Mr. Costas Menegakis: Do you want to finish? Go ahead if you want to finish your thought.

Mr. John Weston: I was going to say that in the case of the two vessels, we had 41 persons detained who were revealed to have either security issues, or in the case of five of them, terrorist designations. That's out of a total number, I think, of 600 and something.

How would you rate those numbers in terms of the type of risk against which we need to take measures such as detention?

LCol Walter Perchal: That's a difficult question because it's an anecdotal situation. We've had two ships.

The question, to me, has to be framed in the context of individual cases. If we don't have any information about an individual, if our agencies and institutions that control our borders feel that there is a risk, they need to have measures in place to manage that risk. We cannot simply open the door and leave it wide open. We can't do that.

Now, all of that again is within the context of the provisions in law that ensure the rights of individuals. This is not indefinite incarceration, nor should it be. Regarding should we allow any one suspect of any of the three conditions I stated—terrorism, crime, or potential illness—to simply wander into the public at large, my personal view is no. I think that would be foolish.

Mr. John Weston: Thank you, sir.

The Chair: You have three and a half minutes.

Mr. Costas Menegakis: Thank you for appearing before us.

Currently under Bill C-31, penalties are only imposed on shipowners. I'd like your thoughts on whether you think that goes far enough. What about people who arrive on planes?

Would you care to take a shot at that, Mr. Elcock?

Mr. Ward Elcock: The focus is more on mass arrivals than it is on planes. Having said that, the reality is that in many cases, people who arrive on a plane are not necessarily smuggled. They may have smuggled themselves, but they may not be part of a large smuggling ring.

I'm not sure the same things.... The focus on smuggling was to look at people who arrive.... People may be legitimate refugees if they arrive on an airplane. The purpose of much of the legislation was to deal with events where human smuggling was involved. You had people who were smuggling for, in some cases, a lot of money.

● (1625)

Mr. Costas Menegakis: We've invested a lot of effort to stop human smuggling from occurring abroad. Certainly you've done a lot of work in that regard.

What are the consequences if we make these investments, but we don't have teeth locally to stop human smuggling?

Mr. Ward Elcock: I think we've actually been quite effective in stopping it. There haven't been any arrivals since the *Sun Sea*. It's probably unwise to claim that we are entirely responsible for that, but we have some say in that happening.

Mr. Costas Menegakis: When the minister was here last week, he said that Canada is not prepared for mass arrivals. He said:

> The current detention review periods under IRPA were not designed to deal with mass arrivals or the sorts of cases involving complex human smuggling operations of the scale that have recently targeted Canada.

In what ways do other countries that are more susceptible to human smuggling, like Australia, handle mass arrivals?

Mr. Ward Elcock: The Australian situation unfortunately is very different from ours in the sense that the arrivals who are being smuggled into Australia by boat come in much smaller vessels from a much broader coastline. Indonesia is not very far away from northern Australia, and in particular, Christmas Island and Ashmore Reef.

The issues that the Australians face are distinctly different. I think they would estimate that their efforts at prevention probably deter no more than a third of the potential arrivals. That may vary. It may be higher. In Canada's case so far, with the mass arrivals we've seen, the ships and vessels are somewhat more easily targeted and dealt with.

The Chair: Thank you.

You have time for one question, Ms. Sitsabaiesan.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): One question, okay.

Along those lines, you said no new arrivals have come in since the *Sun Sea*, and we are not to take full credit for it.

So is it correct, Mr. Elcock, that you were sent to Thailand to work with the Thai government and the Thai police to deter asylum seekers from seeking to come to Canada?

Mr. Ward Elcock: No, Mr. Chairman, I didn't quite say that. I said—

Ms. Rathika Sitsabaiesan: No, I'm not saying you said that. I'm asking, were you in Thailand to work with them to deter asylum seekers from seeking to come to Canada?

Mr. Ward Elcock: I've been in a number of countries working with countries to try to target the organizers of smuggling ventures—

Ms. Rathika Sitsabaiesan: [*Inaudible—Editor*]

The Chair: You know, you've got to let him finish his sentence, please.

Ms. Rathika Sitsabaiesan: Yes.

The Chair: Thank you.

Go ahead, sir.

Mr. Ward Elcock: What I said is that I have visited a number of countries, including Thailand, to work with the authorities in those countries and to work within their laws to try to assist them in dealing with what is a problem that confronts all of us—human smuggling—and has an impact when a vessel arrives in Canada.

Ms. Rathika Sitsabaiesan: Thank you.

Are you aware that Thailand is not a signatory of the United Nations refugee convention?

In your work with the Thai police, as one of the countries you did work with, were you successful in arresting some of the Sri Lankan asylum seekers in Thailand? And is it correct, from what I'm learning, that some of the people who were arrested by the Thai police were deported back to Sri Lanka, back to persecution?

Mr. Ward Elcock: Mr. Chairman, at the end of the day, it's within Thai law what activities the Thai government and officials would undertake. From our point of view, we're simply working with them to assist them in ways to deal with the human smugglers who are attempting to depart to Canada.

I'm aware that they are not a member of the conventions. But, having said that, UNHCR has an office in Bangkok and works very closely with the Thai government.

Ms. Rathika Sitsabaiesan: We, as in Canada, did send people to Thailand to help the local Thai authorities, to work within their laws, when we know that they're not a signatory of the UN convention of the refugee, and there have been people who, we're hearing through the media, have been sent back, deported back, from Thailand, back to Sri Lanka.

Is it true also that there was no review of their refugee status prior to their deportation from Thailand because they don't have a refugee review process?

We're also learning that Canada gave $12 million to the Thai government to work on the deterrence of asylum seekers leaving Thailand and coming to Canada.

So isn't it that one of your projects that you work on is to assist the Thai government to deport asylum seekers back to persecution?

● (1630)

Mr. Ward Elcock: Mr. Chairman, my total budget is about $12 million, so I can assure you I haven't given anybody $12 million. We've worked with a number of countries in terms of capacity-building in a variety of places to assist governments. Many governments in many countries have far less in terms of resources and capacity. They may lack the capacity and may require training to deal with fraudulent documents and so on and so forth.

Our goal is to work with a number of countries, and Thailand is one of them, where we have provided some capacity-building assistance. In many cases it's more often training than it is actually a physical piece of hardware.

The Chair: Thank you, Mr. Elcock.

The time has expired, unfortunately. We could go on, but we can't.

Admiral Loren, Mr. Elcock, and Mr. Perchal, thank you for your expertise, and it certainly has been that.

Thank you.

We will suspend.

● _____ (Pause) _____

●

The Chair: Let's reconvene for panel two.

We have two witnesses: Lorne Waldman, of Lorne Waldman and Associates; and the Anglican Church of Canada, represented by Reverend Canon William Prentice and Reverend Laurette Gauthier Glasgow.

Have I met you before, Reverend Glasgow?

Rev Laurette Gauthier Glasgow (Special Advisor, Government Relations, Diocese of Ottawa, Anglican Church of Canada): Yes, you have.

The Chair: I don't know where it was. Was it in Europe?

Ms. Laurette Gauthier Glasgow: I was the Canadian ambassador for Belgium and Luxembourg and the Council of Europe.

The Chair: That's where it was. Yes. I met you in Strasbourg.

Ms. Laurette Gauthier Glasgow: That's correct.

● (1635)

The Chair: That's right.

You see? I do remember people.

Well, I'm pleased to see you again.

Reverend Prentice and Reverend Glasgow, the two of you have up to 10 minutes to make a presentation, as do you, Mr. Waldman.

You can proceed. The church goes first.

Rev. Canon William Prentice (Director, Community Ministry, Diocese of Ottawa, Anglican Church of Canada): Sir, thank you for the opportunity to be here this afternoon. It's a privilege to be able to engage on this issue and to be here with you in the committee this afternoon.

Within the Anglican Church and within the Anglican Diocese of Ottawa, which is the regional expression of our general synod or national church, our commitment to working with refugees is a long-standing one. It grows from an enduring partnership with Canada.

Anglicans throughout Canada have walked the biblical walk of welcoming the stranger, an integral part of our faith and an important element in our baptismal covenant to strive for justice and peace among all and to respect the dignity of every human being. We do this by opening our arms to refugees and by providing financial and other support to newcomers.

For several decades, the Anglican Church of Canada more broadly, and the diocese of Ottawa specifically, have established close partnerships through sponsorship agreements with the Government of Canada and with other ecumenical groups to sponsor, welcome, and help legitimate refugees build new lives in the safety and security of Canada.

The Primate's World Relief and Development Fund, the official development and relief agency of the Anglican Church of Canada, has had in its mission and mandate a strong concern for and response to refugees both overseas and here in Canada since its founding in 1959.

Ms. Laurette Gauthier Glasgow: We know that immigration and refugee systems can always be improved. We recognize the government's underlying desire for a fair and consistent immigration and refugee system. We also welcome proposals to increase by 20% the number of resettled refugees and the funding for resettlement programs. We even welcome measures that would facilitate and accelerate the processes for the successful integration of refugees into Canadian society.

However, Bill C-31 raises several serious concerns. The Canadian Council for Refugees, amongst others, has articulated concerns with which we concur. These concerns emanate from our long-standing and practical experience with the refugee community and from our deep religious convictions to welcome the stranger and to protect the vulnerable—values that we believe are shared more broadly by others in our open and democratic society.

Mr. William Prentice: Of particular concern and what actually drives us to come and be present here this afternoon is clause 19 of the proposed legislation.

Clause 19 has the potential to place legitimate refugees in jeopardy of losing their permanent residency status and of their removal from Canada. It would permit the deportation of refugees who have been accepted as permanent residents.

Clause 19 would apply to all former refugees, we believe, both those identified overseas who arrive in Canada with their permanent residency status—as is the case for those we sponsor—as well as to those gaining that status after a successful inland claim.

Clause 19, we believe, undermines our commitment to resettle refugees and provide them with the security of permanent residency.

Ms. Laurette Gauthier Glasgow: It also undermines the fundamental objective of Canada's long-standing refugee policy to integrate refugees promptly so that they are in a position to contribute more fully to Canadian society.

It undermines the considerable efforts and human and financial resources that sponsors, other support agencies, and the Government of Canada itself has dedicated to their welcoming, their settling, and their integration.

What befuddles us is the rationale for clause 19. It remains unclear to us, as there are ample mechanisms within the existing legislation to deal with any fraudulent claims or criminal cases.

Mr. William Prentice: But we believe the most threatening aspect of clause 19 is the potential, through the principle of cessation, for this potential law to be applied retroactively, including in situations where people have acted in good faith and within the current law since arrival in Canada, but find later they have unknowingly placed themselves in jeopardy through this retroactive application.

● (1640)

Ms. Laurette Gauthier Glasgow: Through our extensive and long-standing work with refugees, our volunteers are aware of several specific cases where the application of clause 19—either sporadically or potentially systematically as part of the review process for citizenship applications or of major changes in circumstances in the countries of origin—would result in the stripping of permanent resident status or deportation of legitimate refugees. These are not hypothetical cases. These are real cases affecting refugees and families.

There are two broad kinds of categories.

First are the instances of potential jeopardy whereby the permanent resident voluntarily re-avails himself or herself of the protection of his or her country of nationality by using his or her passport of origin. The second general case is where there is potential jeopardy, where the reasons for which the person sought refugee protection have ceased to exist, through the principle of cessation.

Mr. William Prentice: In the first kind of case that we identified, as our volunteers tell us, we know of two situations here in the city of Ottawa, with the refugees we work with, where, if Bill C-31 were enacted and applied retroactively, individuals and their families would have their status jeopardized.

Both cases can be referred to later in testimony, but suffice it to say that humanitarian considerations compelled two refugees in two separate instances to use their passports of origin in order to travel to nearby countries to rescue family members.

In the second case, there is widespread concern, notably among our friends in the Rwandan and Burmese communities, that recent developments in their country of origin might lead to the invocation of the cessation clause, thereby putting the status of legitimate refugees in question, notably with respect to their application for citizenship.

Again, we have four examples we could give to express a more general concern emanating from our friends in the Rwandan community and from the primate's fund sponsorship of Kachin families and a Karen family from Burma.

Ms. Laurette Gauthier Glasgow: Make no mistake: we should rejoice in the transformation of oppressive societies and the consequent normalization of relations with them. That's one of our objectives. However, we should not punish those who left those countries during times of oppression and who have made a new life for themselves and their families in Canada. They have made sacrifices to become part of our country, and their continued hope lies in becoming Canadian citizens regardless of what occurred in their countries of origin.

Mr. William Prentice: We cannot assume that those who have escaped persecution in the past by becoming refugees and later permanent residents in Canada would not face retribution, scorn, or persecution in their country of origin if they were turned away from their country of adoption: Canada.

Ms. Laurette Gauthier Glasgow: In the light of the detrimental effects of several provisions of this proposed legislation on members of the former refugee/permanent resident community in Canada, our recommendation is that we see the withdrawal or redrafting of these provisions through amendments to ensure fairness, transparency, and predictability, as well as to ensure that all provisions of the proposed legislation are in conformity with the Canadian Charter of Rights and Freedoms and Canada's international obligations.

Mr. William Prentice: Mr. Chair, members of the community, it's been an honour to be here this afternoon.

Thank you.

The Chair: Thank you, Reverend Glasgow, Reverend Prentice.

Mr. Waldman, it's your turn.

Mr. Lorne Waldman (Partner, Lorne Waldman and Associates, As an Individual): Thank you very much.

I'm here in my personal capacity, although I am the current president of the Canadian Association of Refugee Lawyers.

I should just like to state that this isn't the first time I've appeared before a committee discussing changes to the refugee procedure, nor do I think it will be the last.

The Chair: I remember seeing you before, but I can't remember where it was.

Mr. Lorne Waldman: I've been before this committee, but I'm not sure if it was in this incarnation. I appeared before committees when the Liberals were in power, and when Mulroney was in power. I worked with Jim Hawkes when he was trying to design a new refugee determination process in the mid-1980s after the Baker decision.

I was a student lawyer assisting groups that were opposed to the legislation introduced by the Liberals in 1976. I appeared before the committee that debated the implementation of the Immigration and Refugee Board in 1989. I appeared again in the mid-1990s when there were changes made, and I appeared before this committee in its incarnation when the Liberals were in power and IRPA was implemented and voted on in 2002.

I should say to you that I have an historical perspective with respect to this. I'm always glad to come and discuss the refugee determination procedure, because I've been involved in representing refugees since 1974—that was my first case—and since then I have represented thousands of persons before the Immigration and Refugee Board or its predecessor, the Immigration Appeal Board.

I understand that the committee has heard a great deal from witnesses who have divergent views on this issue. I don't expect my comments will change anyone's mind, but I'm grateful for the opportunity to share a few of my concerns.

The first point I wanted to deal with was the speed of the process. I wonder if any of the members of this room have ever been at a refugee hearing. As I said, I've attended thousands. I can tell you that it is a process that is fraught with pitfalls that can trap genuine refugees.

I've heard the members here speak repeatedly about the need for an efficient process, and I agree. I see clients coming into my office who have been incredibly frustrated by the delays in the current process, I mean people who are genuine refugees who want their cases decided so that they can start the process of family reunification, something that will be hindered by some of the provisions of this bill that I'll speak to in a minute.

I agree that it is vital that we make this process more efficient, but efficiency cannot be prioritized at the expense of fairness. With all due respect to those who share the contrary position, I can assure you that this process as it's currently drafted, and given the speed with which it is expected to take place, will not result in a fair determination for many people.

Consider the consequences. The first most obvious consequence is that many of the claimants will not have counsel, either through the whole process or at least at the initial stage when they file the first form, the BAC.

What are the consequences of this? There will be omissions in the BAC and, as we all know, the initial presentation is vital, and there's a great deal of jurisprudence from the Federal Court that says that a tribunal can draw adverse inferences if there are omissions from this initial form.

The fact that refugees don't have counsel to prepare the form will undoubtedly lead to many circumstances where there will be vital omissions that could result in adverse inferences being drawn against genuine refugees.

Many claimants will not have counsel at the hearings. I was at the Canadian Bar Association meetings in Kelowna, and some of the members of the Immigration and Refugee Board were there, and I spoke to some senior people who acknowledged that they are fully expecting that the number of unrepresented claimants will increase dramatically under the new process.

I think you have to consider the impact of that. There's already jurisprudence from the Federal Court that says that, in cases of unrepresented claimants, the members who decide the cases will have to take more time to ensure that the hearings are fair. The onus will be on the member to dig out all the details that might be relevant to the claim, and, if the member fails in his duty to conduct that process, the hearings will be set aside by the higher courts.

This will result in lengthier proceedings in cases where counsel is not present. It will also result in many more negative decisions because claimants will not have had a full understanding of what is relevant. There will be many more judicial reviews in which claimants will challenge the fairness of the proceeding because they did not have counsel properly guide them at the initiation of the proceeding.

The speed that this bill envisions will produce a huge pressure on decision-makers to make rapid decisions. We know that when decision-makers are pressured into circumstances, it results in a deterioration in the quality of decisions, and will put greater pressure on the appeal process. The speed with which the appeal process is designed to take place isn't possible.

● (1645)

It's impossible for a person to perfect an appeal in any kind of meaningful way in the timeframe set out in the legislation, given the complexity of the issues. The original proposal was that transcripts would be available, but transcripts will not be available, and that will mean it will make it even more difficult for people to perfect their appeals.

Another important impact will be that refugees themselves will not have time to obtain corroborating documents. One of the things we're seeing more and more in decisions by refugee board members is that they draw an adverse inference when claimants don't have corroborating documents to sustain. So if a claimant says he was arrested and tortured, the member will say,“Why don't you have a medical report?” Well, claimants often can't come with these reports, because if they're fleeing their countries they can't take the documents with them, and they need to have time to obtain the corroborating documents.

This process and the speed with which it is designed to take place will make it impossible for corroborating documents to be obtained. Members will still continue to draw adverse inferences and this will result in more unfair decisions.

Another very important factor is that refugees who come from designated countries will not benefit from either a legislative stay or from an appeal. This will result in a significant increase in the number of stay applications to the Federal Court.

I can tell you, because I was at a meeting with Federal Court judges this past weekend, with the Federal Court bar and bench liaison committee in immigration matters, that the Federal Court is already bursting at the seams and is under-resourced. They're three judges short, and four judges are on sick leave. They cannot afford to have the increased work that will certainly result from this process.

There will be even more and more unfair decisions, and this will lead to more and more cases where claimants will have to seek recourse to the courts, to the minister, and to the media.

The second point I wanted to deal with is the question of detention. I've represented many of the people on the boat and I can tell you that the conditions—I went to the jail in Maple Ridge where they were detained—are shocking. I was shocked when I was there. I went into the cells and I couldn't believe these tiny cells where people were double- and triple-bunked. I'm sure other people have already told you about this. The conditions were unbelievably poor.

People who suggest that refugees are being detained in hotels are misleading the committee. It's true that in Toronto there is one converted hotel that holds about 70 people and I think it's being expanded. But the vast majority of refugees who are in detention are in detention in provincial jails where the conditions are poor to extremely poor. Many of my clients have been traumatized by the experience.

I've heard the questions that were asked by the committee before about the security needs. I can tell you that, having represented many of the claimants who came off the boats, the current legislation was more than adequate. People were detained upon arrival until they could satisfactorily prove identity. Some of my clients were held three or four months under the current legislation, until they got identity documents that satisfied the minister as to their identity. Once identity was satisfied, people could be detained if there was a reasonable suspicion. The Federal Court said that the reasonable suspicion is an extremely low threshold. Individuals who pose a danger were detained until there was a determination that they were not a danger. Indeed, there are still people who arrived on the boat who are still under detention.

Requiring mandatory detention for one year is unnecessary. It is also unconstitutional, and you've been told this many times. The Supreme Court of Canada made it clear in Charkaoui that there must be a regular review by judicial authorities of the grounds of detention or it's a violation of section 7.

To be perfectly clear, and I looked at the legislation again today and I'm more than glad to take you to the sections, the legislation as currently drafted does not provide any judicial mechanism to review a detention within the one-year period. It is true that the legislation says that a person is detained until they're found to be a convention refugee or there are other conditions. The difficulty with that is the next provision right after that says there is no detention review for a period of one year.

The problem that the refugee has is that the refugee cannot go and seek his release after he's been accepted. The only way he can be released is if the minister exercises his or her discretion, depending on who the minister is, to order the release. That's the difficulty with the bill. Why it's unconstitutional is that there is no mechanism for the refugee to review his or her detention within the one-year period. That is the provision that is inconsistent with the Supreme Court of Canada decision in Charkaoui.

● (1650)

There are many other issues, but the last one I want to personally address, because it's one that I see so often in my office, is the impact of designation. These are the provisions that I find particularly difficult to accept.

The Chair: We're out of time, sir. Could you wind up, please?

Mr. Lorne Waldman: Okay.

The provision I wanted to comment on was denial of permanent residence for five years and the denial of a travel document. I can tell you that refugees often display serious psychological problems as a result of the torture they've suffered and as a result of family separation. To aggravate that situation further by denying refugees an opportunity for family reunification for five years, and the possibility of even going to visit their families because they can't get a travel document, is cruel and inhumane, and will have unimaginable consequences on our health care system

Those are my opening comments.

Thank you very much.

The Chair: Thank you, Mr. Waldman.

Mr. Menegakis.

● (1655)

Mr. Costas Menegakis: Thank you, Mr. Chair.

Thank you to our witnesses for being here today. It was interesting to hear your comments.

We've been meeting, as you may well know, with several groups over the last little while, listening to the concerns people have either in favour or in support of certain clauses in Bill C-31. The process for us here is that in due course we'll be reviewing the bill line by line and taking into consideration this democratic input that we have from our witnesses, so your testimony is very important to us. So thank you again for being here.

I want to address the issue of a legitimate refugee who actually really needs the help, because I think that is a common element for all of us. We all want that. We all want to be able to service as quickly as possible the person who is coming here, who was persecuted, whose life was in danger, possibly facing torture or death in their own country. We're finding that a lot of these folks who need help are tied up in a system behind a group that is quite often not a legitimate refugee group, tying up the system.

To process a claim today can go as long as 1,038 days. With the measures in this proposed bill, we can reduce that to 45 days for claimants from designated countries, and 216 days for all other claimants.

One phenomena we're seeing is that we're getting, from one part of the world in particular, 95% of the claimants either abandoning or withdrawing...or their claim is flat-out rejected.

Now, that 95%, apart from the fact that it's costing about $170 million a year—let's just not put a value, because we're talking about human life here—is really tying up the people who legitimately can come into the country.

Can I get your comments on why people would voluntarily abandon or withdraw their claim and return to a country in which they originally claimed they were being persecuted?

Mr. Lorne Waldman: Undoubtedly there are some people who come to Canada and abuse the system. That's always been a reality that we've had to confront. My experience, however, is that those are a small minority of the people who make claims.

I completely agree with you that the current system as it's operating has created a huge amount of hardship for genuine claimants. I completely agree with you that there is a need for reform, which is precisely why, during the minority government, I spent countless hours, losing sleep, working with the opposition parties, to try to come up with what we thought was a reasonable, balanced approach to expediting the process and allowing for mechanisms to deal with bogus claims more quickly.

My difficulty with the approach in this legislation is twofold. First, the timeframes are completely unrealistic, and, if applied, will result in a large number of cases being rejected. The concept of designated countries is one that I don't personally support, but the difficulty I have with the way it is in the current legislation is that it's completely left to the discretion of the minister.

I know, for example, that—

Mr. Costas Menegakis: I'm going to stop you, because I have limited time. You answered my question. I got it from your presentation that you have issues with the timeframes and so forth. I noted them, so let's not take more time discussing the very same thing.

I wonder if I can get some comment from the reverends who are here.

Ms. Laurette Gauthier Glasgow: First of all, we said in our presentation very clearly that we welcome measures that will facilitate and streamline a process. I think Mr. Waldman's comment that there is a balance between efficiency and fairness is important to bear in mind.

You asked why people would go back to their countries of origin. We have a few cases, and we've submitted them to the clerk. We've changed the names. In a number of cases, because of the difficulty of obtaining travel documents, refugees can find themselves in situations of intense pressure—family pressures, where a family member has been left behind, or, in some of these cases, where they've actually been kidnapped by other factions or other family members. In order to be able to be close to them, they have had to use their passport of origin.

You know, I can't imagine what it's like. I know what it's like to be a mother, and I can't imagine what it would be like to be separated from a minor child. In one case, where a woman did return to Pakistan using her Afghan passport, she managed to get her son back, and after five months of.... He was becoming really quite depressed about no action. He finally was able to come into Canada. He has been sponsored by the original church group and he's now enrolled in high school and working part time. He'll be able to apply for citizenship in 2014.

The irony is that this poor woman is now in jeopardy because of clause 19. I think you will understand the unfairness of that situation.

● (1700)

Mr. Costas Menegakis: The chair informs me I have less than a minute left.

Here is what we're finding. We're finding that human smuggling operations are very profitable and they're getting very, very sophisticated in using and abusing the system, promising things to people that they just can't deliver.

We had the case of the two ships that came in, in Vancouver. Forty-one of those people were found to be security risks or had perpetrated war crimes in their own countries. So we're very concerned about who we allow into Canadian society, in our neighbourhoods, and around our families.

I just thought I'd make that point. I believe I've used up my time, so thank you very much for responding to my questions.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

I want to thank the three of you for coming to present before the committee.

As you know, we have our Bill C-11, and Bill C-11 hasn't been fully implemented yet. As a matter of fact, we've only implemented a very short part of it. So without seeing if the great Canadian compromise actually will resolve issues, we're now into the process of rewriting a legislation again.

My first question is for one of you, Reverends. Are you aware that as well as the threat of someone being sent back, losing their refugee status, or their PDR, if they travel back...or if in the country of their origin things improve, that exists, but also for the first five years they would not have travel documents, nor could they apply for family reunification? Then, once they apply at the end of the five years, you know we don't have a speedy system. It's like mercury after that as well.

So what kind of impact would that have on families that you have been dealing with? You have some experience of having that kind of a separation.

Mr. William Prentice: You know, my family came to Canada a number of generations ago. They were economic refugees from Europe. In terms of the reunification of the family, one member got here and then facilitated the arrival of others.

Family reunification, helping families come together and contribute to Canadian society, has always been an important part of our system, of the way we do business as Canadians. So provisions that will stand in the way for the folks that we support through our refugee programs...not just us within the diocese of Ottawa but for all the sponsorship agreement-holders in Canada, although we're not speaking for them. Provisions that stand in the way of family reunification, of helping a mother connect with her son who was kidnapped, escaped from his kidnapper, got back to a safe country, or a safer country, and then through family reunification was brought here to Canada—things that stand in the way, like that, I can't see it, ma'am. I really can't.

We need to create a system that will allow families to be together; allow legitimate refugees who have been screened overseas by Immigration Canada to find their way to Canada in a timely manner; and allow their families to be reunified after some of the terrible, terrible traumas—that I can't even imagine—that they've experienced.

● (1705)

Ms. Jinny Jogindera Sims: Thank you very much.

Ms. Laurette Gauthier Glasgow: Perhaps I could add one element—namely, I suspect that most members of Parliament would find their workload in their constituency offices decrease considerably as a result.

Ms. Jinny Jogindera Sims: Thank you very much. I would concur.

This question is for you, Mr. Waldman. In this legislation, as you know, the minister has this total power—the new centralized power system—of designating irregular arrivals retroactively.

We're not talking about from the day the legislation comes into effect. We're talking about going back to March 31, 2009, which would include people we have already processed through the *Ocean Lady* and the *Sun Sea.*

Retroactivity punishment is actually prohibited in the charter with respect to the Criminal Code. Do you think this clause provokes a legal challenge, and can you elaborate on this for us common folk?

Mr. Lorne Waldman: I highlighted one area where I think there are serious constitutional issues, which is the detention. It's not the only area. I expect there will be constitutional challenges to the provisions denying family reunification because of the impact it will have on refugees who are in Canada.

On the provision you are talking about, I have clients accepted as refugees who have applied for permanent residence. Unless they get permanent residence before the bill comes into effect, they will then undoubtedly be retroactively designated—I'm talking about people on the boats—and then won't be able to apply for permanent residence for five years, or their applications will be suspended.

I expect that the concept of retroactivity will be one of the things we will be challenging once the bill is implemented. It is unfortunate that the government has chosen to bring forward a bill that I think, and many other experts think, has so many serious constitutional flaws. Undoubtedly, we're going to be spending years in the courts as these matters get adjudicated, instead of doing what we should be doing, which is protecting refugees.

Ms. Jinny Jogindera Sims: I have a scenario that I want to run by you. A refugee claimant is refused by the refugee protection division. He is not entitled to an appeal to the refugee appeals division and there is no automatic suspension of the removal order if he makes an application to the Federal Court for judicial review. He could actually be sent back before he gets a hearing.

What is the likely removal procedure? And if the RPD member has made a mistake, what are the claimant's chances of preventing being sent back to a risk of persecution and having his life put in danger?

Mr. Lorne Waldman: Perhaps we could call it “claimant roulette”, because really it will depend on whether he gets counsel in a timely fashion, because there will be no protection against removal. Once a negative decision comes down, if he's from a designated country he could be subject to immediate removal. He'll likely still be in detention, so the only way he can resist removal is by applying for a stay in the Federal Court, which means he has to have a lawyer who can bring the stay forward in a timely fashion.

We know these cases are going to get high priority. If the claimant can find a lawyer able to bring the stay forward, my sense is that the court will give very careful scrutiny, given the timeframes, but if he doesn't, he'll be removed. That's why many of us who look at this system believe that the potential for error is extremely high, and we fully expect that there will be many genuine refugees who will be deported as a result of it.

Ms. Jinny Jogindera Sims: Canadian compassion at work.

The Chair: Thank you.

Mr. Lamoureux, go ahead.

Mr. Kevin Lamoureux: Just as a quick note, the legislation is noted as being very costly, anti-constitutional, not fair; all sorts of assertions have been made during the hearing process.

We focus a bit more on families in this particular presentation.

First, to the two reverends, perhaps I can get your very quick thoughts on this. I only get five minutes.

A family of four arrives by boat, with two young children under the age of 10. If this legislation passes, it will make it mandatory that the parents be in detention for a full year. The children would have to be taken out of that family environment and likely put into some form of foster care. Unless there is an amendment made to this legislation, that's my interpretation of what would happen.

What would you say to the minister on that issue? Again, be very brief, if you could.

● (1710)

Ms. Laurette Gauthier Glasgow: I think it's unconscionable that a child of that age would be put into care.

I understand that another option is to remain with the parents, but in circumstances that are certainly not what any of us would accept for our own children.

Mr. Kevin Lamoureux: Okay.

Mr. Waldman, now, my understanding is that there is no exception. You've already highlighted that it is a one-year mandatory sentence, no matter what the minister tries to say.

The issue I have for you is actually twofold. One you might not want to comment on, but you can feel free to comment on it. You were actually fairly soundly criticized inside the House, because, after all, you have a bias; you apparently are going to benefit—the suggestion is that your organizations that you're a participant in are —if your position actually prevails.

If you want, you can comment on that. It might not be worthy of comment.

What I am interested in hearing you comment on is let's assume you are the minister and two refugees arrive at the Toronto International Airport. What sort of fair process would you envision them going through?

Mr. Lorne Waldman: The only comment I'll make on the bias is that I'm the author of several books on immigration and refugee law, which are often cited by the Federal Court. I've been called a scholar by judges of the Federal Court, so I think that's a fairly fulsome answer to suggestions of bias. I won't respond to the other aspect of that.

What would be a fair process? A fair process would be one that requires a timely decision. I have no difficulty with timeframes, but the timeframes have to be reasonable regardless of whether the person is designated or not. The problem with the current process is not that it's problematic; it's that it wasn't sufficiently resourced to do the job it had to do in the time it had before it.

I'll give you an example, if you want to see an irony. The current IRPA says that a Federal Court judge has to review an application for leave, of any immigration decision, render a decision, and the hearing has to be held within 90 days.

Because they don't have enough Federal Court judges to decide the leave, what happens is that a judge will look at the decision, but in order to comply with the law, he will then wait, and the formal order won't be issued until there's a slot. There are not enough Federal Court judges to hear the leave.

So they get around the law by deciding the matter but not formally issuing the order. One can imagine similar scenarios beginning to occur in the refugee determination process.

Depending on the volume of claims, if there are enough people to decide the claims, then claims will get decided in a timely fashion. It doesn't matter what the timeframes are. Refugees would love to have their hearings held within two or three months, as that would allow them to have sufficient time to retain counsel. My clients suffer greatly by having to wait for years before they get a positive determination. There's absolutely no dispute about that. The reason this happened was that the system wasn't properly resourced.

There's no problem with the current system if it's properly resourced. Fundamentally there aren't any significant changes. The big change is that instead of having order in council appointees we're having public servants. The same decision-maker, the same division, is still going to be making decisions. There's going to be the same basic form. Instead of having 28 days, it's going to be filed in 15.

The question really is, regardless of what the legislation says, will there be sufficient resources to allow for a timely decision? I mean, to decree 30 days, 60 days, 90 days, 120 days won't make any difference; if there aren't enough resources, the refugee board will have to find ways to deal with the caseload—

The Chair: Thank you, Mr. Waldman.

Mr. Leung.

Mr. Chungsen Leung (Willowdale, CPC): On the timely hearing of these immigration cases, the former United Nations High Commissioner for Refugees, António Guterres, indicated, and I'm paraphrasing what he said, that there are indeed safe countries of origin, and indeed there are countries where the refugee claimants do not have as strong a case as the others. So therefore it seems as if the UNHCR has reason to ask for these cases to be accelerated.

Now, if that is the case, and following along the comment that was just made, wouldn't one of the processes we would follow be based on designated countries of origin? There needs to be a class of countries that we need to act on expeditiously.

● (1715)

Mr. Lorne Waldman: We in principle don't support it. The reason we don't support it is that my experience is that many countries that appear to be democratic are not necessarily democratic, or may not be democratic for a subcategory of individuals. The best case is Mexico. Some of the cases I've seen out of Mexico are shocking and appalling, and you can see some of the recent decisions of the Federal Court that reflect that. Mexico has huge issues in terms of state protection. They have a huge drug trafficking problem, and it's created major problems for individuals.

You referenced the UN. I understand the UNHCR supported the idea of a designated country list as it was drafted in Bill C-11, which meant that there would be expedited hearings for people from designated countries. They certainly didn't support the idea of removal of an appeal.

We agreed, as a compromise, to support a designated country of origin list if it meant an expedited hearing. But the problem with the current incarnation of the bill is, (a), the designated country of origin list does more than that. It removes the right of appeal, it removes the mandatory stay. And (b), the timeframes for the hearings are completely unrealistic. So you're saying you're going to give a sham of a hearing to a person who won't have enough time to properly present his case, to satisfy the constitutional guarantees.

I can tell you that we'll challenge that under the charter, because a fair hearing means a hearing that allows a person enough time to prepare a case, to present a case in a meaningful fashion, and 15 days and 30 days, in my view, isn't going to cut the mustard.

Mr. Chungsen Leung: It then appears that the UNHCR is putting a burden on the countries that are faced with human trafficking and illegal immigration, and so on, with the standard we need to be speedy, be expeditious, but at the same time they're not allowing us the tools to work with.

Mr. Lorne Waldman: I think there are lots of tools you can work with, and if you resource the system sufficiently....

l'll tell you something; the success or failure of this determination process isn't going to be decided here, in this room. It's going to be decided in the hearing room, and it's going to be decided based on a series of things. If the IRB can create a cadre of competent decision-makers who can make good decisions, if there are enough IRB members who make good decisions, then the system will succeed.

We'll challenge certain aspects of it, but good decision-makers will find ways to make competent and fair decisions, notwithstanding the constraints that the legislation will impose upon them.

You can create legislation, but if you don't have sufficient resources....

I can tell you, from 1976 until now, every system has failed. This is the fifth time I've been here. Every system has failed.

It's failed because of two things: not enough decision-makers and not competent decision-makers.

Mr. Chungsen Leung: I appreciate your history and perhaps tenacity in staying with this issue, but given the number of mass arrivals and irregular arrivals that we're faced with, how large a bureaucracy do you foresee? How big should our IRB be?

I mean, what kinds of resources do we need to put behind it?

Mr. Lorne Waldman: I don't know; the gentleman behind me could probably give you better advice in terms of numbers.

But in terms of the number of decision-makers you need, probably, if the IRB had been up to full complement all the way through the period as opposed to being very short in its complement for a long period of time, we wouldn't be faced with the huge backlogs that resulted in the two- or three-year delays in the processing of claims. You need to make sure that you have....

You know, it's not rocket science. If the average number of claims is about 25,000 and you can project how many decisions can be made by a decision-maker per week, you multiply that by 40 or 45 weeks and the number of decision-makers and you come up with a number.

It's not thousands; it's 200 or 300 decision-makers, which is what the IRB has now.

Mr. Chungsen Leung: Potentially, then, I can see this whole system being caught up in its own quagmire by refugee claimants refusing to provide the necessary information for the IRB to make those decisions.

● (1720)

Mr. Lorne Waldman: If refugee claimants don't provide the form within the time stipulated by the rules, their claims are declared abandoned. That's one of the main reasons claims are declared abandoned. It's not that the board doesn't have the recourse. If the claimants don't cooperate, they lose their right to make a claim.

Mr. Chungsen Leung: Let me turn to the issue of bad advice for people who are using the asylum route to gain entry into Canada. How do you feel about that?

People around the world are saying that Canada's system is perhaps flawed, it's easy, so therefore they will use the asylum system to get in rather than going through the regular lineup or going through the United Nations High Commissioner for Refugees camp to submit their claims.

Mr. Lorne Waldman: I'll give you two examples of cases where the government took initiative at different periods of time that were highly successful.

I agree with you; I see the human suffering caused by people coming into Canada, paying huge amounts of money to smugglers, to present claims that have absolutely no merit. It breaks my heart every time I see it. People end up mortgaging their houses back home in order to come, with absolutely no hope of getting into the country, and the only people who profit are the travel agents and smugglers.

One of the circumstances where that happened was in Mendoza, Argentina. There was no political situation. There was some economic chaos. Travel agents advertised and encouraged people to come to Canada. A wave of people came and made fraudulent claims.

Working with the community, with the Canadian High Commission in Buenos Aires, there was an active advertising campaign that was undertaken in Mendoza, and it was successful in stemming the tide.

I mean, for sure, I agree with you that it's a huge problem, but there are ways of dealing with it, proactive ways, that can prevent—

The Chair: We're way over, Mr. Waldman. I have to move on.

Mr. Lorne Waldman: Okay.

The Chair: Monsieur Giguère, your turn.

[*Translation*]

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

My question is for Laurette Gauthier Glasgow and has to do with clause 19.

We tried to determine the purpose behind this clause. We asked questions, but we did not get any answers. We would very much like to know what its purpose is. Take all the time you need to explain this to us. You are the perfect person to tell us just how detrimental this provision could be for those who will be subject to it, as well as how much this clause will affect them, people who have become our neighbours, who have children and who contribute to the community.

Ms. Laurette Gauthier Glasgow: Mr. Giguère, we do indeed share your confusion with respect to the purpose that this clause will serve. We have absolutely no idea. The current legislation includes measures to deal with fraudulent cases or misunderstandings, so it isn't necessary to add anything. We really have no clue as to why it's there. However, we can envision two possible scenarios happening.

The first involves someone who travels on their passport of origin for humanitarian reasons, which are perfectly understandable reasons in our own families. That person risks being deported and losing their status, and that risk applies retroactively. We cannot figure out why the government has done this. We cannot see what they are trying to fix with this provision.

The second case involves a large number of refugees who are in Canada legitimately and whose situations received approval from the Office of the UN High Commissioner for Refugees. The government is our partner in that respect. And now, because their country is probably more democratic, the situation changes. Take, for example, the recent cases involving individuals from Rwanda and Burma. Those refugees—who would have to return to their countries—are being prevented from receiving Canadian citizenship. They would lose their status. We are hurting our own society.

Consider the case of four young girls living in Ottawa. They arrived from Rwanda, they went to school here, continuing on to post-secondary studies, and are making significant contributions to society. They are bilingual, trilingual and even multilingual. They will surely run for office, once they have obtained their citizenship. Are we going to tell them that they cannot become Canadian citizens, because things are better in Rwanda now? That is completely unfair.

● (1725)

Mr. Alain Giguère: My second question is for Mr. Waldman.

We have heard from a number of witnesses, and they have all said that the timelines set out in the bill were not realistic. People can't obtain documents, such as the results of medical assessments, in so little time. What do you make of those comments? Do you think the timelines set out for making a claim are appropriate?

[*English*]

Mr. Lorne Waldman: I'll have to speak in English; my French is not up to it.

The answer is no; obviously, I've already stated my view.

One, we do want a fast, expeditious process, but it has to allow reasonable timeframes. It has to allow reasonable timeframes to prepare the initial statement form and it has to allow for reasonable timeframes for claimants to bring in corroboration.

The other alternative is this. The way the law is now, the jurisprudence says that if a claimant doesn't bring in corroborating documents, medical reports, proof of detention, proof that he attended demonstrations, the board member can draw an adverse inference. If you want to shorten the timeframes, then put into the legislation a provision that says a member cannot draw adverse inferences from lack of documentation. Then you've created a balanced system.

Right now the way it is, you're creating a situation where it would be impossible for claimants to bring in the documentation but still allowing members to draw adverse inferences from the lack of documentation. It's completely unfair.

The Chair: *Merci.*

Mr. Calkins, you're our guest, and we're giving you three minutes.

Mr. Blaine Calkins (Wetaskiwin, CPC): That's probably about two minutes more than I need, Mr. Chair.

All kidding aside, I am here as a guest today. It's the first time I've actually even subbed in on this particular committee. Obviously, I'm seized with the issue and I appreciate your being here.

Reverend Prentice and Reverend Gauthier Glasgow, I just want to say how much I appreciated your testimony. My grandmother was very strong in her faith as a Christian. She practised as an Anglican, and I had many occasions to visit our church in my hometown of Lacombe. She was a very interesting lady, very compassionate in her own right, but also very staunchly conservative in her views. I'm sure she would be having a similar conundrum in trying to reconcile some of the things we're discussing here today.

The question I have for you is one of where we can do the most good. From a global perspective, is it in the best interests with the limited resources that we have—and I'll get to resources with Mr. Waldman in a moment—and I've heard lectures from people on both sides of the issue, to be investing our capital and our time in a bureaucratic process here to bring a limited number of people here, and let's face it, it's a lot of people, but it's a very limited number of people who might otherwise need help throughout the world. Or, should we be using those resources to do more good, whether it's capacity building, governance building, democracy building, any of those other kinds of exercises around the world? If you could answer that, just from a 30,000-foot view, because we all want the same thing. We want to do what's right for humankind. We want to do what's in the best interest to elevate everybody's standard of living around the world.

Could you help us with that? Are those questions that you ask yourselves when you're doing this? We're spending a lot of time and effort talking about a select few people who come here to seek refugee status, and we're spending a lot of money trying to sort out this process. Is that the right thing to do, from a global perspective?

Ms. Laurette Gauthier Glasgow: Perhaps I could reach back to a previous hat, because I spent 37 years in government doing government policy, 25 years of which I served as a diplomat.

How do you measure the impact on one life? I've seen transformation through a variety of things. I wonder if it's an either/or or an all-of-the-above situation. It's a bouquet of things. We have international assistance. We have capacity building. We've done that in so many areas, and we have to continue to do that. The church does that as well. We're helping refugees settle here. At the same time the Primate's World Relief and Development Fund is doing that also. I was just at their board meeting in Toronto last week.

We have refugee programs in Kenya, Egypt, India, Sri Lanka, Palestine, and the Middle East region. In other words, we're helping out there and asking how we can help them potentially move from where they are and resettle to their countries of origin.

I think it's all of the above. We have to find a way to always have our arms open. I don't think we could ever find ourselves in a situation of saying that none is too many. That is something that would be a shame.

● (1730)

The Chair: You're finished, Mr. Calkins. It was nice having you for three minutes.

Mr. Blaine Calkins: Well, I won't be back, Mr. Chair.

The Chair: Oh, I'm sure you'll be back to get even.

Reverend Gauthier Glasgow, it was good to see you again, and Reverend Prentice and Mr. Waldman, thank you for your contribution to the committee.

We will suspend.

● _____ (Pause) _____ ●

● (1735)

The Chair: We will reconvene for the final panel of today.

We have witnesses now from the Office of the United Nations High Commissioner for Refugees. We have two participants from that organization, Mr. Furio De Angelis, who is a representative in Canada, and Michael Casasola, who is a resettlement officer.

Good afternoon to both of you.

Mr. De Angelis, you will have up to 10 minutes to make a presentation, and then there will be questions from the committee. Thank you for coming, sir.

Mr. Furio De Angelis (Representative in Canada, Office of the United Nations High Commissioner for Refugees): Thank you, Mr. Chair.

[*Translation*]

Mr. Chair, honourable members of the committee, ladies and gentlemen, the Office of the United Nations High Commissioner for Refugees, or UNHCR, welcomes the opportunity to comment before the committee on Bill C-31, the Protecting Canada's Immigration System Act.

UNHCR offers these comments on federal legislation further to the mandate entrusted to it by the United Nations General Assembly, in other words, to direct and coordinate international efforts to protect refugees around the world and to seek solutions to their problems.

UNHCR recognizes the strength of Canada's commitment to protecting refugees around the world, as well as the challenges that the country must address. Canada must ensure the sustainability of its system and maintain its high standards in protecting displaced individuals seeking asylum, while finding durable solutions within its borders.

[*English*]

The UNHCR written submission, a copy of which has been provided to this committee, provides our full comments and recommendations regarding Bill C-31.

My comments today will focus on selected provisions of the bill that will have the most significant impact on Canada's asylum procedures. These comments fall within two general themes: provisions that provide for the differential categorization of asylum seekers and provisions that have the effect of restricting access to the asylum process.

Regarding the designation of foreign nationals as irregular arrivals, UNHCR understands and shares the Government of Canada's concern about the need to combat people smugglers. Yet asylum seekers are often compelled to resort to smugglers to reach safety. The proposed designation of irregular arrivals may lead to an unwarranted penalization of those in need of international protection and, in effect, punish the victims of the smugglers or traffickers for having sought to escape persecution.

With regard to the grounds for designating someone as an irregular arrival, Bill C-31 will create two classes of asylum seekers and refugees in Canada based on the designation provision. Of particular concern is the designation for operational reasons.

Consequences of the designation that are of concern to UNHCR include mandatory detention without review for 12 months, no appeal rights, restriction on the issuance of convention travel documents—which may be at variance with article 28 of the 1951 convention—reporting requirements despite the granting of convention refugee status, and the five-year bar on regularizing status and its implications for family unity.

UNHCR recalls that the principle of family unity is enshrined in international law. The UNHCR executive committee, of which Canada is a founding member, has underlined on several occasions the need for the unity of the refugee's family to be protected. From a non-discrimination point of view, UNHCR does not believe that the grounds for designation as irregular arrivals provide a legitimate justification for a substantially differentiated treatment. The legislation may be at variance with human rights-based non-discrimination guarantees contained in international human rights instruments.

UNHCR's long-standing position has been that the detention of an asylum seeker is inherently undesirable. The situation of asylum seekers differs fundamentally from that of ordinary immigrants in that asylum seekers may not be in a position to comply with the legal formalities for entry, not least because of the urgency of their flight or their inability to approach authorities. Article 31 of the 1951 convention takes this situation into account and prohibits penalties being imposed on refugees on account of their illegal entry or presence.

The United Nations Human Rights Committee has noted that for detention to be lawful, it must pursue a legitimate governmental objective that it is determined to be necessary, reasonable in all circumstances, and proportionate in each individual case, and that detention can only be justified where other less invasive and coercive measures have been considered, and that mandatory and non-reviewable detention is unlawful as a matter of international law.

In UNHCR's view, the relevant provision of Bill C-31 as currently drafted would be at variance with several international standards. For these reasons, UNHCR strongly recommends that the government refrain from introducing a mandatory detention regime for irregular arrivals in relation to refugees and asylum seekers, and that alternatives to detention be explored.

Regarding designated country of origin, UNHCR does not oppose the introduction of a designated or safe country of origin list as long as this is used as a procedural tool to prioritize or accelerate the examination of applications in carefully circumscribed situations.

● (1740)

The designation of a country as a safe country of origin cannot establish an absolute guarantee of safety for nationals of that country. It may be that despite general conditions of safety in the country of origin, for some individuals the country remains unsafe.

It is important than an assessment of countries of origin as safe is based on reliable, objective, and up-to-date information from a range of sources. One way of achieving transparency and quality decision-making could be by ensuring that the designation is done by a panel of experts.

I now wish to turn to measures that UNHCR fears may restrict access to the asylum process.

Regarding the restriction of access on asylum on criminality grounds, in UNHCR's view asylum applications should not be considered inadmissible unless the individual concerned has already found effective protection or access to an asylum procedure in another country.

UNHCR has already expressed its views in the past over exclusion elements being examined under the heading of ineligibility or inadmissibility to the refugee proceedings. Our submission to this very committee on March 5, 2001, which set out the office comments on the Immigration and Refugee Protection Act, remain valid. UNHCR is of the opinion that exclusion from refugee status on criminality grounds should be considered in accordance with article 1F of the 1951 convention, within the assessment to determine the merits of the claim, rather than at the admissibility or eligibility stage.

Regarding shortened time limits under the new asylum process, UNHCR supports efforts by government authorities to decide applications in a timely manner. However, states need to balance efficiency with the fairness of the procedure. Overly restrictive timeframes in the context of a sophisticated asylum process can lead to increased rates of abandonment and the rise of a number of unrepresented claimants. Asylum claimants do not ordinarily have the knowledge to navigate the legal system. Even where a client retains counsel, enough time needs to be allowed for applicants to apply for legal aid and to find a counsel. The consequence of abandonment are, in effect, a final, negative decision, as there is no right to an appeal or access to a pre-removal risk assessment for one year after the negative decision. In this respect, appropriate resources should be allocated towards creating, maintaining, and supplementing legal services for asylum seekers.

Regarding the refugee appeal division, UNHCR welcomes the implementation of the RAD; however, it would recommend that an appeal be available to all claimants. The right to appeal is a fundamental requirement of a fair and efficient asylum procedure, to which no exception should be made. At the core of the 1951 convention principle lies the principle of non-refoulement, whereby those with protection needs cannot be returned to a place where they will be at risk of persecution. The purpose of a second review through an appeal mechanism is to ensure that errors of fact or law, at the first instance, can be corrected to avoid injustice and to ensure respect for the principle of non-refoulement.

Regarding restricted access to the pre-risk removal assessment and to humanitarian and compassionate applications, pre-removal risk assessments and humanitarian and compassionate applications are important safeguards against the deportation of persons who are not recognized as refugees according to the law, but who are still in need of international protection. In particular, given that many categories of asylum seeker will not have access to an appeal under the RAD, the availability of such mechanisms are all the more important to maintain as a procedural safeguard.

Regarding the reopening of a refugee claim, UNHCR maintains that claims for protection should be reopened when new evidence comes to light, including situations where there has been a breach of natural justice, to allow for the claim to be re-examined in its entirety, and recommends that the jurisdiction of the RPD and the RAD to reopen claims be affirmed.

Regarding the cessation of refugee status, the proposed amendments in the bill to bar the appeal against a negative decision on cessation of refugee status, leading to subsequent possible revocation of permanent resident status, will result in a state of uncertainty for many refugees, including resettled refugees, and thus will undermine the durable nature of the resettlement solution. UNHCR recommends the decision on cessation should be subject to appeals and should not automatically bar access to or revoke permanent resident status.

● (1745)

Finally, regarding the disclosure of information, in the context of refugees and asylum seekers, UNHCR recommends that appropriate safeguards be introduced in the text of Bill C-31 to avoid the transmission of biometric and other information, either directly or through a third party, to countries of alleged persecution.

Chairman Tilson, honourable committee members, ladies and gentlemen, I thank you.

The Chair: Thank you, Mr. De Angelis.

Mr. Dykstra has the floor.

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

I'm going to take a couple of rounds here so that everybody can get settled in, I think.

With regard to one point you made in terms of alternate methods to deal with the issue of detention, would you have a suggestion as to how to do that? Our concern obviously is that a number of the individuals who, for example, were on the *Sun Sea* or the *Ocean Lady*, had issues with respect to criminality or issues with respect to war crimes.

The concern we have, obviously, is that the alternative to detention shouldn't mean that an individual or individuals have easy access to the streets of our country without ensuring the safety of the residents and the citizens of Canada.

Mr. Furio De Angelis: According to international standards, detention in the asylum process is permissible. This is regulated by ExCom 44 of the executive committee. As you know, the executive committee is the governing body of UNHCR, which approves the budget of the organization, and also issues conclusions that are guidance, direction, on international protection to UNHCR. The executive committee...which, of course, Canada is a founding member.

There are situations for which detention is permissible for a period of time under certain circumstances, for situations that may need to be investigated with respect to identity, with respect to a situation where applicants, for instance, destroy their documentation, their identity documents.

So this is a system that is there to guarantee that a situation like the one you are referring to, in terms of criminality, may be assessed and analyzed. The alternative to detention is a mechanism that would also allow people who do not belong to the category of a possible threat, or the possible need to be investigated, to be allowed to be released in a situation as an alternative to closed detention.

This is something—

● (1750)

Mr. Rick Dykstra: I'm sorry; I appreciate that, but we only have seven minutes per round.

I'll try to be succinct. If you could do the same, that would be awesome.

Mr. Furio De Angelis: Absolutely.

Mr. Rick Dykstra: I want to get in as many questions as I can, and I want you to answer as many as you can.

There are several western industrialized countries, though, that actually detain some or most asylum claimants, correct?

Mr. Furio De Angelis: Yes.

Mr. Rick Dykstra: I understand in the U.K., for example, they can detain a claimant at any point throughout the determination process and that some of the streams of refugee claimants are actually detained through the determination process.

If that is the case, in your opinion, based on what you said, is the U.K. in contravention of the UN convention on refugees?

Mr. Furio De Angelis: Well, surely UNHCR would not support, let's say, a rush to a lowest common denominator. We are saying that there are international standards and we'll try to encourage and urge all governments to apply those standards, which have been set by the international community and by the executive committee itself.

I would say that it has to be taken into consideration country by country. In this situation, I would encourage Canada to definitely maintain standards that have been set in international law.

Mr. Rick Dykstra: I would suggest that we are.

When I look at France, for example, refugees can be detained at any point throughout the asylum process. I don't think you would argue that France is in contravention of the UN declaration.

Mr. Furio De Angelis: I don't think I'm going to go into the analysis of countries, because this would really go beyond my capacity at this moment.

I would like to repeat that the standards are there, and UNHCR puts the same emphasis for every country in which we advocate the compliance with international standards. Whatever analysis and whatever advocacy we can do here in Canada, we'll surely do it in any other country of the world.

Mr. Rick Dykstra: I certainly appreciate that. I'm just stating examples of where our detention legislation in Bill C-31 is actually not as aggressive as it may be in some other countries.

I think you would understand that as we were developing the policy, we did look to what other countries were doing that were not accused of being in contravention of the UN convention on refugees.

I have another example. I just returned from the Netherlands, and in my meetings with officials, I was surprised to learn about one of the aspects of detention they use when individuals destroy their documentation after they arrive at the airport. When individuals walk up to the visa officers, immigration officers, and indicate that they arrived in the Netherlands with absolutely no identification, those individuals are then held and detained at the airport until their information...or at least until information is available to determine who these individuals are.

At the airport, if they are determined, there and then, not to have an issue with respect to asylum, it is the airline that is actually responsible for flying these individuals back to their country of origin.

I'd like to get your thoughts on that. I certainly entertain the recommendation that you made that there are alternatives. I'd also point out that there are other countries that are far more aggressive than Canada in terms of detention, number one.

The second is that we're in a position of not being as aggressive as a number of other countries that we partner with in a lot of other areas. So I would submit that you would have to take a look at that when you're viewing this, because that's exactly what we did, and you're viewing other countries in terms of their detention law versus the one that we're bringing forward here.

Mr. Furio De Angelis: I can also add something in that respect, because Canada already has good experience with alternatives to detention. You know that with the Toronto bail program there is a very high rate of compliance, more than 90% compliance, so this is considered a well-run program, cost-effective, and reasonable.

On the other side, we are also seeing a certain move, especially in Australia. There is a report of March 2012 by the joint select committee, a parliamentary committee on a review of Australian immigration detention. We are actually seeing that, in Australia, there is a move toward community detention and residential housing, especially for children and families.

In a sense you are right, the responses from countries vary and they can be different from one another, but we also have certain examples, especially Australia, which is, as we all know, a country that has explored detention so much and certainly moved to alternatives.

Thank you, sir.

● (1755)

The Chair: Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: Thank you, Mr. Chair.

Before I get to my questions, I would just point out that we heard from European Union officials this morning. They told us how important it was to respect our international obligations towards refugees and asylum seekers under the 1951 Geneva convention. They also told us that the European Union could opt for sanctions against certain countries that chose not to respect such conventions.

My question has to do with the list of designated countries. The minister said that UNHCR did not object to creating a list of designated countries of origin as part of a balanced reform of the refugee system. Could you please tell us whether UNHCR agrees with the approach to designated countries of origin as set out in Bill C-31?

Mr. Furio De Angelis: I will answer in English, if I may.

[*English*]

It's very clear that UNHCR does not oppose a list of designated countries of origin. However, it must be understood that the DCO list is a procedural tool. It's not a process, only a procedural tool. We are putting too much emphasis and focus on this. It is a procedural tool that may help in certain situations to facilitate the processing of asylum claims.

What is really important is the process. In order to make a solid process in refugee status determination, there is a need for certain things to happen. Once the process is solid, a designated country list is a tool. It's a tool that may be helpful if used in a certain manner.

The process that makes for a strong and robust asylum determination system includes adequate time for submitting an application—there has to be enough time to find counsel and collect the information necessary. There has to be a first-level hearing that is solid and robust by an independent tribunal like the IRB. Of course, IRB members must be well-trained decision-makers. There must be enough resources put into research on countries of origin, because refugee status determination is a difficult art and requires continued training.

You also need a review phase, a capacity for reviewing errors, in fact and in law. It's very important to catch errors, which may lead to bad decisions and therefore refoulement.

Finally, at the end of the process, there must be a quick removal. The quick removal part of the process is the real disincentive. We are talking very much within the context of Bill C-31. If you have a solid process and a quick removal at the end of that process, you will create a disincentive, which hopefully will take care of the people who want to abuse the system.

[*Translation*]

Mrs. Sadia Groguhé: These same people from the European Union told us they did not assume that a refugee's claim was unfounded. They do not assume that a refugee claim is unfounded beforehand. But in the course of our committee discussions, there has been a lot of talk about bogus refugees. Could you tell us where UNHCR stands on that term and its meaning?

[*English*]

Mr. Furio De Angelis: *Faux réfugiés* you would translate as "bogus refugees", in English?

That is a terminology that actually, I have to say, does not exist. It's a contradiction in terms. If you are a refugee, it means you are recognized as a refugee at the end of a process for which, by definition, you are genuine.

If you are not a refugee, you are still an asylum seeker. Asylum seekers are those who seek asylum. They may become refugees, they may become failed asylum seekers. But not all failed asylum seekers are fraudulent by nature. Some may become failed asylum seekers in good faith, genuinely. Let me give you an example.

Take a person who flees from domestic violence—possibly a woman, but not necessarily—and wants to get as far as possible from the abusive family. She arrives in Canada under bad counselling from friends and fails the asylum application because she has not sought national protection in the country she has fled from. In order to be a refugee, you have to prove that you sought national protection, but it was unavailable to you. This is very important in becoming recognized as a refugee.

That person will fail and she will be a failed asylum seeker, but I would not call her fraudulent. She didn't know. She was badly advised.

So the term "failed asylum seekers" may include fraudulent asylum seekers, I agree; but "failed asylum seekers" may also include those who made their applications in good faith and failed.

● (1800)

[*Translation*]

Mrs. Sadia Groguhé: What is UNHCR's response to the cessation of refugee status in Canada, especially as it pertains to refugees who have resettled here?

[*English*]

Mr. Furio De Angelis: What is very important in terms of solutions is that the solutions are durable, are permanent. In the international protection of refugees, there are three solutions, as you know: the voluntary repatriation to your country of origin, the legal integration in the country of asylum where you arrive, or the resettlement.

Resettlement is very important in Canada, because Canada is a very generous country in that respect. It's not a convention obligation. It's 12,000-plus people, now increased by the government, who are generously given resettlement in this country, but this must be permanent, must be durable. Resettlement has to be durable in nature.

The Chair: Thank you.

We have to move on to Mr. Lamoureux.

Mr. Kevin Lamoureux: Thank you, Mr. Chair.

I appreciate the presentation and I especially appreciate the detailed presentation that you provided us in written format. It's very well stated.

We do find that Bill C-31 has many, many different flaws in it. I can make reference to the mandatory detention as being something that will no doubt be taken to the Supreme Court. I expect there are a number of clauses that will in fact be successfully challenged at some point in court. I don't believe the government's done its homework in regard to that particular issue.

But there are other issues that really do concern us that I would like to receive some feedback from you on.

One is a United Nations 1951 resolution that dealt with the whole idea of two tiers or a double standard for refugees. It would appear that this legislation is establishing that. For example, if you're deemed as an irregular refugee and you're held in detention, you are not going to be able to sponsor your children. For example, even if you're deemed a refugee and you've been released out of mandatory detention, you still cannot sponsor for at least five years a child or a spouse.

I wonder if you might want to comment on that aspect, given other refugees in fact are able to if they weren't designated or they weren't irregulars. It seems to me it's a clear distinction: two types of refugees.

Mr. Furio De Angelis: I would say that designation in itself is not a problem, because sometimes designation can help in certain processes. What the problem is here is the effect of designation, of course, and the impact of designation into refugee rights that are acquired. So I would say that what we are trying to present as a possible area of improvement is that the impact of that designation should not infringe on acquired rights.

When someone is recognized as a refugee and has a right to family reunification and has a right to certain rights established in the 1951 convention, those rights should be available at the moment of recognition and should not be available later on because there is nothing in the convention that allows a country to give rights after a certain period of time.

● (1805)

Mr. Kevin Lamoureux: If a refugee arrives at an airport and is deemed a refugee several months later, that refugee is able to go ahead and sponsor a child. Now if they're classified—because I agree with your comments—as an irregular and they're held in detention, they're not allowed to.

My understanding is that this is against the United Nations policy, to which Canada was signatory, that the refugees in one nation have to be treated equally. At least that was the expectation back in 1951.

Is that not a correct assumption on my part?

Mr. Furio De Angelis: There are several clauses of non-discrimination in various international human rights instruments: article 3 of the 1951 convention and articles 9 and 26 of the International Covenant on Civil and Political Rights. The issue is the differential treatment upon designation. That's what I'd like to insist, that it's the impact of that designation on established rights that is important.

We also have to remember that the human rights treaties have to be interpreted in a very special manner. They have to be interpreted to the benefit of the persons who are protected. According to the 1969 Vienna convention on interpretation of treaties, treaties have to be interpreted according to their objective and purposes in good faith, according to ordinary meaning and the objective and purpose of the treaty.

Now, by definition, a human rights treaty has its objective and purposes in the protection of the human beings that the treaty deals with, so in that respect the interpretation of the 1951 convention has to be done in favour of the persons the convention itself aims at protecting.

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Chair.

I want to take a little bit of a different tack here in the same area.

Does the UNHCR actually encourage people to use human smugglers as a vehicle or as a way to extradite themselves from the dangerous position they are in, in their own country of origin, to go to another country to seek asylum?

Mr. Furio De Angelis: Umm—

Mr. Rick Dykstra: It's a pretty straightforward question.

Mr. Furio De Angelis: Well, the short reply would be no, but I'm trying to understand your question. We recognize—

Mr. Rick Dykstra: If you'll let me ask me the next one, I'll take you down the road as to where I'm going with this.

So you're opposed to human smuggling.

Mr. Furio De Angelis: Absolutely yes.

Mr. Rick Dykstra: So you're not opposed to countries to work towards the end of human smuggling.

Mr. Furio De Angelis: Of course we are not, and—

Mr. Rick Dykstra: The reason I'm asking this is to ask what actually your organization is doing to help countries...because obviously, from your perspective, human smuggling isn't something that you would encourage—although you believe anyone who is seeking asylum should be treated with the same types of human rights as each other, and I don't disagree with you there.

I'm seeking from you an understanding of what the UNHCR is actually doing to combat human smuggling.

Mr. Furio De Angelis: From the general international UN point of view, I want to say that there is, as you probably very well know, the 2000 United Nations Convention Against Transnational Organized Crime, which is very important in this particular field. There are three protocols to which Canada is party, the so-called Palermo protocols. One deals with human smuggling. The other deals with human trafficking. The other deals with trafficking of weapons.

I believe the UNHCR encourages, within the UN system, all countries to really find their responses in terms of law enforcement within that process. It is a process. There is a conference of parties. There is a working group. I think the next session is in October of this year in Vienna.

There is a process that goes on, and this is the international process in which countries have to find their responses, how to coordinate the fight against human smuggling and human trafficking. UNHCR from our point of view—although we recognize that sometimes refugees are obliged to use smuggling networks in order to reach safety—is doing certain activities.

I remember in certain operations.... I was in Turkey, for instance, when people coming from Iraq were going through minefields and all that. We were putting information in place. We were trying to reach communities and saying this is dangerous; if you have to seek asylum, try to find alternative routes.

So the UNHCR on certain occasions puts in place information campaigns to prevent situations that could be so dangerous.

● (1810)

Mr. Rick Dykstra: Let me ask you this more specifically. Two panels before...and I appreciate your acknowledging that really the only thing the UNHCR is doing to combat human smuggling is information campaigns.

We, actually...although there has been a lot from the other side saying not enough of Bill C-11has been implemented yet, one of the components of Bill C-11 was the appointment of Ward Elcock as our lead designate in countries where smuggling originates.

He's been in that position now for about a year and three months. Could you let the committee know what exactly the UNHCR has done in terms of working with Mr. Ward Elcock on fighting human smuggling?

Mr. Furio De Angelis: I have to say that I had the pleasure to meet Mr. Elcock a few months ago during my introductory meetings, having arrived in this country in my function only last August. I found the meeting and the discussion with him extremely interesting and really stimulating.

I remember Mr. Elcock appreciating very much the work that he was doing together with UNHCR, and appreciating the closeness of our cooperation, especially with our office in Thailand—

Mr. Rick Dykstra: That's a good example.

Could you give me a couple of concrete examples of when you've worked specifically with Mr. Elcock and the country of Canada to fight human smuggling? You were just about to get into Thailand; are you saying that you partnered with him there, and there are concrete examples of what you did in partnership with Canada to fight human smuggling?

Mr. Furio De Angelis: I can probably refer to the Bali process, to the establishment of the regional support office, to the encouragement that we are giving Canada in terms of joining the Bali process, and to all that process that is going on.

I can't really be more specific than that, because I was not personally part of that thing, but I do remember this very well during our meeting with Mr. Elcock, yes.

Mr. Rick Dykstra: I appreciate that.

You mentioned one of the other aspects early on regarding Canada's position with respect to how many refugees we receive here in Canada on a per capita basis. I just wanted you to confirm that. Obviously, you made reference to the other aspect of Bill C-11 that's been implemented, and that is the additional 2,500 refugees here in our country. One of the concerns I have is that there isn't enough public acknowledgement that Canada is, in fact, receiving on a per capita basis more refugees than any other country.

Mr. Furio De Angelis: If need be, I am absolutely ready to make an acknowledgment of the importance of Canada in the system of global international protection. Canada remains a very active member of the ExCom. Canada remains an important donor to UNHCR. Canada remains a major resettlement program—the second in the world—and these are things that are there.

I can just confirm it, but there wouldn't even be a need to confirm that, because that's well known. But that's why we want Canada to remain as such.

The Chair: Thank you. I'm sorry, we have to move on.

Ms. Sitsabaiesan, you have the floor.

Ms. Rathika Sitsabaiesan: Thank you, Mr. Chair.

Thank you to both of you for being with us today.

As you were mentioning earlier, it's not a race to the bottom. Canada has always been a world leader on human rights, and I think we should continue to be a leading front.

What many of our witnesses have acknowledged, and I think what you were saying also, is that this bill punishes the refugees, rather than actually addressing the problem of human smuggling. We see that the bill would concentrate more arbitrary power in the hands of the minister of the time, and allows the minister to treat refugees, or refugee claimants, or asylum seekers, differently, depending on how they come to Canada.

We know that article 31 of the UN refugee convention prohibits states from imposing penalties on refugees for illegal entry or presence in the country. How could the designation of irregular arrivals be reviewed in light of article 31?

● (1815)

Mr. Furio De Angelis: The designation, as I said, is a procedural tool and can help if it facilitates the process in terms of identifying needs, in terms of facilitating the processing. What we need to avoid is the designation infringing on established rights. I believe that it is most important to avoid mandatory detention, because I understand, without being an expert on your national legislation, that there is already the capacity and the possibility of maintaining people in detention.

Ms. Rathika Sitsabaiesan: Absolutely. Many of our legal minds have said that, confirming without a doubt that our current legislation does have that capacity.

Mr. Furio De Angelis: I think that, of the people who arrived by boat two years ago, very few are still in detention for obvious legitimate reasons, and, if they are in detention, it's because the law allows that. So we were just wondering if that would be enough for lifting this provision from the bill.

Thank you.

Ms. Rathika Sitsabaiesan: Thank you. Almost all of the immigration refugee lawyers who have come in to this committee have said exactly the same thing: that our law already has the necessary provisions.

Talking about the boats that came in, we hear members opposite say that there are 41 who are inadmissible and all this, but I want to correct the record, because a lot of false numbers have been thrown on the record.

We can talk about the MV *Sun Sea*. We had 493 people who left on the voyage; one perished, and so 492 arrived at our shore. Of those 492 people, only 19 were considered inadmissible. Of that number, 16 are crew members, who are automatically thought of as part of the smuggling ring. So only three out of the 492 were actually considered security risks, and that's because of their former membership, dating back to the 1990s, in the LTTE. None of them was actually considered a current security risk; it was simply based on their past membership.

How do you feel about the misconstruing of facts? I must say that the numbers I just quoted are from lawyers who defended—

The Chair: Stop the clock.

You know, there you go; you're starting to alienate the government, and then they'll alienate you.

Ms. Rathika Sitsabaiesan: How—

The Chair: You have every right to ask those questions, but try to do it in a way that's less confrontational to the government, because they can do the same thing to you.

Ms. Rathika Sitsabaiesan: Okay. Thank you, Mr. Chair.

The Chair: Thank you.

Start the clock.

Ms. Rathika Sitsabaiesan: Sure.

These are from lawyers and facts that I got from the *National Post*. We know that it's a very right-leaning newspaper, so if.... Anyway, I digress.

I'm going to jump to timelines, because it will change gears.

What are your thoughts or views on the timelines that have been imposed under Bill C-31 and the consequences of these new timelines?

Mr. Furio De Angelis: On timelines, we appreciate—and I want to say it—the government's efforts to create a more efficient system in the processing of asylum claims. This is reasonable and legitimate. We also support implementation of efficient timelines.

Of course, the issue is what are efficient and what are adequate timelines. It's important that the timelines should not impact upon certain rights of the processing. That means the right to counsel and also the ability to collect and review information. What is the preparation stage for an interview? It's the right to counsel and also gathering information.

The timelines should be adequate to this process, and also, considering that Canada has a sophisticated legal process, it is necessary for a certain, particular category of vulnerable asylum seekers to find their way in the process.

● (1820)

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you.

I want to pursue this and get your response on it, because I know that the issue of detention is an area of concern for all of us, not just the opposition. The purpose and intent of what we're trying to accomplish with respect to detention is to ensure that individuals who should not be out in the Canadian public are simply not.

I would ask you: when those slightly fewer than 500 individuals landed in British Columbia, would it have been right, just based on the fact that a majority of them could apply for refugee status, to simply release them all into the country with no regard for background checks, no regard for identification, and no regard for ensuring the safety of Canadians, simply because a majority of them were not considered war criminals?

Mr. Furio De Angelis: I'm sorry I haven't brought with me ExCom 44, which I would have read in that regard. But I have quoted it before, saying that detention is permissible; that it's possible to include a detention phase at the beginning of the process in order to exactly meet those concerns that you are referring to.

I would have liked to read it because there are safeguards anyway in that detention that would have called for a review mechanism, for instance, which is very important. So, yes, it's as you say, but Bill C-31 doesn't really comprehensively adhere to the safeguards and review mechanism that are contained in ExCom 44 or international standards at large.

Mr. Rick Dykstra: One of the areas I wanted to ask you about... and you have done a great job of complimenting Canada in terms of the system it has. I mean that in a very non-partisan, non-political way, because I truly believe in the system that we have, but it is in fact broken in many ways.

We've heard over the last week and a half about the thousands of individuals who are coming from the EU, claiming refugee status here in Canada by the thousands, abandoning their claims, and going back to their countries of origin. We know that there are in the neighbourhood of 40,000-plus individuals in the country right now who have either abandoned their claims or have simply not pursued them any further and are not located, either by the CBSA or by Citizenship and Immigration Canada.

We also know that there are over 2,000 individuals whose refugee applications were approved but then subsequently were found under appeal to be fraudulent or not true, and we are in the process of trying to ensure that those individuals do not remain in the country; that they are sent back to their country of origin.

So while I submit that there are great things about our system, part of the reason Bill C-31 is here is, for example, the thousands of applications that are withdrawn or simply abandoned.

In your opinion, if a claimant voluntarily withdraws or abandons their claim and returns to their country of origin, is that not an admission by the claimants themselves that they simply are not in fear of persecution in their country of origin?

Mr. Furio De Angelis: Of course, in a sense case by case, every case has to be seen within its own merit and within its own study. Of course, I know there is this element of this large number of people coming from EU countries.

The other thing I want to say is the refugee definition is universal in nature. People may have a good asylum claim regardless of whether they are recognized as refugees or not; they may have a valid asylum claim from all countries. Issues arise in EU countries as well that may warrant a valid asylum claim.

● (1825)

Mr. Rick Dykstra: To be fair, I understand your point. But you are acknowledging that there are thousands of applications that have been made in Canada that are in fact not refugee claims.

Mr. Furio De Angelis: I haven't said that; I'm sorry. I don't know about numbers in that respect very well. I am saying that all applications have to be studied on their merit. There may be a number; I wouldn't know exactly the number.

But I also want to say that there are situations in all countries, including EU countries, that may warrant valid asylum claims.

The Chair: Thank you, sir.

[*Translation*]

Mr. Giguère, you have the last word.

Mr. Alain Giguère: Thank you kindly, Mr. Chair.

Clause 19 of Bill C-31 introduces a concept that is radically different, in other words, giving refugees conditional permanent residence. A person who has been recognized as a legitimate refugee and who has obtained permanent resident status can have that status revoked at the minister's discretion if, at any point, he feels that the refugee's country of origin has become safe. Does that not violate refugee status rules allowing an individual to truly make a new life for themselves?

[*English*]

Mr. Furio De Angelis: Yes. I was speaking earlier about the importance of the durability of solutions. Of course, if someone arrives in Canada, especially as a resettled refugee but also as a claimant, and receives his permanent residency, it should be durable.

However, I also understand that the minister, here in this committee a few days ago, recognized that this will not be applicable to refugees only on the basis of changed circumstances in the country of origin. We recognize that this is very important, and we applaud. If this will be translated into the bill, it will be very important that only for changed situations...circumstances in the country of origin; this should not be a basis for cessation. But I understand that the minister has announced that, and we are very glad to hear that.

[*Translation*]

Mr. Alain Giguère: In terms of what these provisions mean for refugees, the ban on humanitarian and compassionate applications, so-called irregular arrivals, and the one-year ban on accessing a PRRA also go against international rules, don't they?

[*English*]

Mr. Furio De Angelis: Yes, the analysis of the pre-removal risk assessment should be conducted in a timely manner to ensure that those protection needs that are not captured within the refugee process may be found within the PRRA, or the pre-removal risk assessment. It's a safeguard.

[*Translation*]

Mr. Alain Giguère: They are prohibited from submitting a refugee claim on humanitarian and compassionate grounds.

[*English*]

Mr. Furio De Angelis: Do you mean after 12 months?

We are thinking that not having an appeal, or a review phase, is a problem. Without a review phase, the pre-removal risk assessment is a safeguard in the process. If there were a review process, of course, the pre-removal risk assessment would be less important. That's why it's so important that the process maintain a review element.

The Chair: Thank you, Mr. De Angelis and Mr. Casasola.

The time has expired. Thank you for coming and taking the time to meet with the committee to give us your comments. We appreciate it very much.

I have just a couple of words for the committee. I regret to advise you that there will be no meetings tomorrow.

An hon. member: Gee whiz.

The Chair: I'm sorry. The deadline for submitting amendments is tomorrow at noon. So if you have amendments, submit them to the clerk by that time or they will not be accepted.

We agreed on April 26 that we would start clause-by-clause at noon on Wednesday. The clause-by-clause schedule is starting Wednesday from noon to 2 p.m. and from 3:30 p.m.to 7:30 p.m. Thursday is from 8:45 a.m. to noon and from 3:30 p.m. to midnight.

Mr. Rick Dykstra: If necessary.

The Chair: I hope it's necessary, because it's after my bedtime, and I get very cranky late at night.

Mr. Rick Dykstra: Do you mean more cranky than usual—sir?

Some hon. members: Oh, oh!

The Chair: This meeting is adjourned.

Thank you, gentlemen—

● (1830)

Mr. John Weston: Excuse me, Mr. Chair; amendments to what?

The Chair: Amendments to this bill.

You may not have any. Maybe there will be nothing. Maybe it will be unanimous, but somehow I doubt it.

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