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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (1530)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, ladies and gentlemen. We will start the meeting.

This is the Standing Committee on Citizenship and Immigration, meeting number 57, Monday, November 5, 2012. This meeting is televised. Pursuant to the order of reference of Tuesday, October 16, 2012, we are examining Bill C-43, An Act to amend the Immigration and Refugee Protection Act.

For the first hour we have —

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Mr. Chair, I have a point of order.

I would like to seek unanimous consent—

The Chair: I'm just about to introduce our guests.

Ms. Jinny Jogindera Sims: With all due respect to the guests, I'm hoping this will take less than a minute, if I may have consent.

The Chair: Let's hear whether it's a point of order.

Ms. Jinny Jogindera Sims: On October 31, 2012, the finance committee moved that clauses 308 to 314 of Bill C-45 be debated by the appropriate committees. I would like to move that right now.

The Chair: No, we've agreed. I've called a subcommittee meeting, as you know, Ms. Sims, because you were given notice of it. You know we are discussing that immediately after this meeting. Why you would raise it now when you know it's going to be held in the subcommittee meeting, I'll never know.

It's not a valid point of order, and you're going to have to wait to talk about it in the subcommittee.

Ms. Jinny Jogindera Sims: Thank you, Chair.

The Chair: I'm going to introduce our guests.

We have Barbara Jackman, who is an immigration lawyer. She's been here before on Bill C-43.

We have Robin Seligman, who is an immigration lawyer as well. Hello again.

We have David Matas, who has also appeared before, on Bill C-31. Good afternoon to you, sir.

Mr. David Matas (As an Individual): Good afternoon, and thank you for having me back when I've already appeared before.

The Chair: It's always a pleasure to see you, sir.

Ms. Jackman and Ms. Seligman, you have 10 minutes between you for a presentation, and then the members will have questions.

Thank you for coming.

Ms. Robin Seligman (Immigration Lawyer, As an Individual): Thank you very much, and thank you for having us.

I will speak for the first five minutes, and then Barb Jackman will speak for the second five minutes.

On Bill C-43,, the faster removal of foreign criminals act, let me start by saying that if this legislation was truly about removing foreign criminals, I would not be here today. The fact is that this legislation has very little to do with removing foreign criminals from Canada and has everything to do with taking away appeal rights and attacking permanent residents of Canada; yes, permanent residents of Canada, many who have lived here for a long time and have all of their family in Canada. These are not foreign criminals.

In addition, the criminality that this bill addresses can be relatively minor in nature to trigger the catastrophic result of permanently separating a permanent resident of Canada from their family in Canada, including being separated from their spouses and children indefinitely.

I will address the immigration appeal division aspect of it, i.e., taking away appeal rights from permanent residents of Canada. Barb Jackman will address restricting access to humanitarian and compassionate grounds, misrepresentation bars, and additional matters.

Bill C-43 takes away all appeal rights for permanent residents of Canada if convicted in Canada with quite a minor sentence, or even if that permanent resident is abroad and is convicted of, or has committed, an act outside Canada which, if done in Canada, would have a sentence of 10 years. This would include such offences as fraud, personation—that means using somebody else's identification—theft over, domestic matters. It does not matter if there's a conviction or what the actual sentence is abroad. A fine could trigger this section, and on its own, could make a permanent resident indeterminately separated from his family.

Let me use the example of someone who has come to Canada as a child and is now 50 years old. They are married, have children, grandchildren, and a home in Canada, and are working and supporting their family. They have never had any trouble with the law, but never applied for their Canadian citizenship. There are many people in Canada under those circumstances: Americans, Italians, Greeks, Portuguese. They just never became Canadians, although they came to Canada when they were small children.

On one occasion, this person makes a bad choice and gets into a fight, or drives dangerously, or commits theft under $5,000. If they get a sentence, even a conditional sentence of six months, no jail time is served, and they get a fine, or not even a fine, and they plead guilty—because it makes sense in terms of dealing with the criminal justice system and they would be advised to do so by most criminal lawyers. Approximately 80% of all criminal matters are pleaded to; otherwise, the system would grind to a halt. This has been given to me by the Criminal Lawyers' Association. This person would be deported from Canada without any right of appeal to the immigration appeal division, notwithstanding they have basically spent their entire life in Canada, and have no connections and sometimes don't even speak the language in their home country.

What the bill does is it takes away all appeal rights for this person. The immigration appeal division does not necessarily have to let the person stay in Canada, but at least it gives them a chance to consider all the circumstances of this person's case, such as how long they've been in Canada, the seriousness of the offence, if there's a pattern of criminality, family in Canada, what rehabilitation they've made. Then the immigration appeal division makes a fair and balanced decision.

Normally, in a case like the one I just described, the person would be allowed to stay in Canada and would be put on a stay of removal, basically probation for a certain period of time, usually three years to five years. If they break the law in any way, they would be deported automatically. I would hope and think that most Canadians would support this type of result.

I'm also going to provide for you samples of cases where people have obtained sentences of six months or more from the immigration appeal division. In many cases, the person has not been allowed to stay, and in the others the person has been allowed to stay. What I hope you will take the time to do is to read the types of cases and the types of people who are involved in these situations, who find themselves on the wrong side of the law. It may be a one-off situation of fraud and a situation where all of the person's family is in Canada. I don't think anybody would reasonably think that a person in those circumstances should be deported indeterminately and indefinitely from all their family in Canada.

I'll leave this with the clerk for you to look through.

● (1535)

The Chair: We'll undertake to make that available for committee members, if they wish to see it.

Ms. Robin Seligman: Thank you, that would be great.

If that person commits the offence abroad and doesn't get convicted of anything, they would also be forever barred from returning to Canada or appealing their case to the immigration appeal division. These situations also apply to Canadian citizens who are sponsoring a spouse abroad.

The Chair: You're now at five minutes, Ms. Seligman.

Ms. Robin Seligman: I'll have to cut it off.

I'll just say that I hope we don't take a zero tolerance approach: you do the crime, you do the time, an American-style approach. This is not the Canadian way.

The Chair: Ms. Jackman.

Ms. Barbara Jackman (Immigration Lawyer, As an Individual): I want to open by saying in 1933 the Supreme Court of Canada recognized the fundamental principle in the prerogative of mercy case. Deportation is not a punishment. You are not to use deportation as a punishment, but that's what this legislation seems to be doing. You have six months, no second chances; one shot and you're out.

The United States put in a law like this. We have dozens of people in Windsor who've been kicked out of their homes. They've lived all their lives in the United States. They have a felony conviction. They're in Canada making refugee claims so they can be close to their families. Do you want the ones in Canada going over to the U. S. doing the same thing?

These are people, some of whom have lived all their lives in Canada. All we are saying is to have discretion. Leave the discretion there. This brings me to my second point.

Clause 9 and clause 17 of this amending legislation take away humanitarian and compassionate discretion and the discretion to issue a temporary resident permit to people who have been found to be inadmissible on security grounds, organized criminality, or war crimes. What you don't understand, or what I think you need to understand, in terms of that legislation is that for persons for whom there are reasonable grounds to believe they were members of a terrorist organization, or at some point in their youth they may have been involved in street gangs or something like that, and they have grown up and left it behind them, it leaves them without any remedy whatsoever on humanitarian grounds.

That is not a piecemeal change to the legislation. That is a fundamental change to our immigration history. From the time we got legislation in 1910 there has always been a broad discretion on the part of the minister or a body like the immigration appeal division to allow people to remain in Canada on humanitarian and compassionate grounds in recognition of the fact that hard and fast rules don't fit with the fact that people are human beings.

This legislation will mean that for the first time ever there will be classes of people who don't get any kind of discretion, who don't have access to any kind of discretion, who won't have anybody looking at their case. That is so out of keeping with our humanitarian tradition in terms of the way our legislation has always been structured.

Another point I want to cover is the misrepresentation bar. I want to cover it in the same way as with the other bars. If a person misrepresents, they are barred for five years under this legislation. Right now it's two years. The problem with these provisions is that they're all very broadly interpreted.

I'll use an example of a member of a terrorist organization. Mrs. Joseph Pararajasingham's husband was a member of Parliament in Sri Lanka who was assassinated. He was in a democratic party, but that party negotiated to try to end the war for the LTTE, the Liberation Tigers of Tamil Eelam. They were negotiating on the part of the LTTE because it was a banned organization. She's a terrorist because she was her husband's secretary, and her husband, although elected to a democratic party of the House of Parliament in Sri Lanka, was for a party that helped try to negotiate an end to the war, so she's barred. This legislation means that this woman, who must be close to 80 now, whose only two kids are in Canada and are Canadians has been branded a terrorist. It means that she doesn't have any way around it in terms of humanitarian discretion. She can't go to the minister and request a permit to stay or say, “Please let me stay on humanitarian grounds.”

On the misrepresentation bar, we had a case in which the dad was being sponsored. In his past history, back in the 1960s, he put that he'd worked as a Hindu priest in training. He left out that he'd worked as a mechanic part-time throughout those four or five years that he was a priest in training, because his principal occupation was priest in training. He misrepresented. It was not relevant at all to his sponsorship as a parent. It didn't matter where he worked, but he was barred on the misrepresentation. His only son can't sponsor him for five years under this legislation. This is extremely harsh legislation.

The rule in Canada has always been that you allow someone to look at the circumstances or the facts of the case, and then they make a decision on whether or not the person should be exempted. If you want to keep criminals out—

● (1540)

The Chair: Perhaps you could wind up, Ms. Jackman, please.

Ms. Barbara Jackman: Okay.

If you want to keep serious criminals from hurting others, detain them while they're going through the removal proceeding. Don't throw the baby out with the bathwater.

Thank you.

The Chair: Thank you, Ms. Jackman.

Mr. Matas, we have your notes, and we thank you for coming again.

You have up to 10 minutes to make a presentation.

Mr. David Matas: As you can see from my notes, I want to talk only about one provision of the bill, clause 24.

The first point I would make is that the change proposed in clause 24 is anomalous in that it treats a foreign act where there is no conviction more seriously than a conviction in Canada. Moreover, the standard of proof is considerably less: reasonable grounds to believe or, in the case of a permanent resident, balance of probabilities instead of proof beyond a reasonable doubt.

The proposal made in the bill, which treats foreign acts on slender proof of criminality so much more seriously than Canadian convictions, rings a false note. One would have thought that Parliament would treat crimes in Canada at least as seriously as crimes abroad. With the proposed amendment, that is not the case.

The amendment would have the effect of keeping husbands and wives apart in cases where the marriage is genuine and there are children of the marriage, on the basis of evidence that the foreign spouse has committed an act which does not meet the standard of balance of probabilities, let alone proof beyond a reasonable doubt, or where there is a foreign conviction and the circumstances of the offence are such that no jail time was imposed. I ask, do we really want to do that?

A second serious concern the proposed amendment raises is the reduction from two years to six months for the appeal threshold. The bill assumes, as its title indicates, that the change would lead to faster removal of these people. That raises three questions: Would it be faster? Should these people be removed? Once removed, what does the taxpayer have to pay for their return?

The enactment of the bill would not remove humanitarian discussion from the system for those sentenced to six months or more. Rather, it would relocate it to officers reporting on admissibility and minister's delegates referring reports to the immigration division of the board.

This duty of officers to consider humanitarian discretion on reporting and referral is elaborated in the manual in detail. One part of it, for people who came to Canada before age 18 and have been here for 10 years and have no right of appeal, requires that the case go to headquarters. Okay, but once the report goes to headquarters, it can take quite some time to get out of headquarters. This bill of course increases that population.

Even for people not covered by this particular headquarters referral manual provision, processing the delays will become more substantial with the bill. Where there is an appeal to the appeal division of the board, the exercise of discretion to report and refer can be cursory. Where there's no appeal, the exercise of the discretion to report and refer will have to be considerably more careful and detailed. Moreover, the decisions to report, refer and remove are subject to judicial review in Federal Court. Where the judicial review succeeds but the person has been removed, the person is then brought back to Canada at government expense, and there's a statutory provision to that effect.

We have actually gone through this process before. It used to be that you had to have a public danger opinion before you lost the right of appeal, and that was changed to the two-year threshold. As a result of that change, there were some successful judicial reviews where people had been removed and then people were brought back at government expense.

These sorts of returns and payments by the government are only bound to increase with the decrease from two years to six months. Indeed, instead of calling this bill the faster removal of foreign criminals act, for some people we'd have to call it the faster removal and costly return of foreign criminals act.

There is an assumption built into the provision that Canada will be safer because of the change, because criminals will be removed more quickly. However, that assumption is misplaced in at least one respect, making Canada a more dangerous place.

The immigration appeal division of the board has a power the minister does not have to stay a removal order subject to terms and conditions. An immigration officer can either report or not report a person as inadmissible. The minister's delegate can either refer or not refer the person to an admissibility hearing. If there is no report or referral, the person is left to carry on as he or she was before without restraint or hindrance.

In contrast, the board, in addition to having the power to allow or dismiss an appeal, can stay an appeal. I quote in the written materials the sorts of conditions the board can impose. There's quite an extensive list of them.

They are useful conditions to impose on some people whose removal is too drastic a response to their behaviour, but simply letting them go on as they were before is too lax. The bill removes this option for a group of people who, because of the lesser nature of their offences and their strong ties to Canada, will in the exercise of the governmental discretion not to report or to refer, be allowed to stay. For this group, the protection from criminals that the legislation offers Canada is weakened.

● (1545)

Permanent resident criminals never exist in isolation. When they succeed in their appeals, the reason is mostly not just them. The reason is others: their spouses, their children, their parents, their employers, their voluntary associations, their places of worship, their communities. The board allows the appeals because Canadians will suffer from the removals. The proposed change ignores this dimension. How are the concerns of Canadians who want their friend, relative, employee, or co-worker to stay to be brought to bear? Not easily.

The appeal process exists for a reason. It may take longer because there are competing considerations that have to be weighed carefully, judiciously. At some point, haste makes waste. The stronger the reasons a person should stay and the weaker the reasons the person should be removed, the more is lost with the loss of the appeal process.

The proposal assumes that those appealing are delaying the removal through the appeal, and that abolition of the appeal would speed up their removal. However, there are many people with sentences of six months or more who now win their appeals. While they could still stay if there were a decision not to report or refer, that is, I acknowledge, less likely than the winning of an appeal. People who should not be removed will be removed regardless, because of the change in the law.

Once the board has the jurisdiction to hear an appeal, it can allow the appeal on humanitarian and compassionate grounds, taking into account the best interests of a child directly affected by the decision. There are a number of cases decided by the appeal division of the board where the person appealing was sentenced to six months or more, but the appeal was nonetheless allowed because of the best interests of a child who would otherwise be separated from a parent. In my brief, I quote one such case for you. The removal of appeals in cases like these will have an adverse impact on Canadian children, something that should give us pause.

In sum, my view is that this particular provision should not be there. It treats foreign offences more seriously than Canadian offences. It imposes hardship and cost on Canadians. It works against the best interests of children. It will not make Canada safer. It cuts down on the options available for dealing with offenders. The delays saved in the appeals will be lost by delays elsewhere in the system. It will lead to poorer quality decisions. In my view, the provision should be dropped.

Thank you very much.

● (1550)

The Chair: Thank you very much, sir.

The government is first. Mr. Opitz.

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

I'll direct my first question to Ms. Jackman.

Do you think it's too much to ask people coming to Canada in the first place not to commit crimes in this country and not to victimize Canadians? I hear you talking about the rights of people coming here and then committing crimes, but I haven't heard you really talk about the victims of these crimes.

Ms. Barbara Jackman: The people I represent are the people being deported. Of course there's a concern about the victims.

The thing is, you're talking about a broad class of people. If someone comes in as an older teenager or an adult and commits crimes, I don't have a problem with deporting those people if they've committed serious crimes. I do have a problem if they came in at six months or two years of age, and they're being deported as an adult. They have spent their life in Canada. Their family is here. Everybody is here. They don't even know their home country. Those people didn't sign a contract when they came in. Their parents didn't get citizenship for them. There's no proactive stuff in any of the schools to teach them that they need to have citizenship.

The other thing that you should know, and which you probably don't know, is that the European Court of Human Rights said in Europe that they couldn't deport people who came to Europe as young children even if they were criminals in their adult life. As a result, states like France have laws where, if you came in under, I think, 10 or 15 years of age and you've lived in France for 10 years, you can't be deported because you're really a French person even if you're not actually a citizen. This law doesn't recognize that.

The other biggest kinds of cases that we see quite often involve people who have mental illnesses. People who develop these illnesses when they're in their late teens are being deported. They have no support outside Canada except for their family in Canada. You don't send somebody who is mentally ill off to a country on their own.

There are lots of reasons that some people should be allowed to stay.

Mr. Ted Opitz: Oftentimes it's our courts, though. They decide if somebody is guilty of a crime. It goes through the courts. It's not necessarily decided by a bureaucrat in terms of guilt or innocence.

Ms. Barbara Jackman: True.

Mr. Ted Opitz: On your point that if they've been here for 50 years and nobody told them that they should apply.... Come on. If you've been here for a long time, at some point you recognize that you should apply for Canadian citizenship.

Ms. Barbara Jackman: You know, I have clients who had Immigration show up at their door and who did not know that they were not citizens because they never travelled. They just grew up here from the time they were little kids.

That doesn't happen very often, but it does happen.

Mr. Ted Opitz: In the odd case, I can understand that, but broadly, most people do recognize that they should take out citizenship. I know that this government and others, and other agencies, do try to educate people on that as often as we can.

Ms. Barbara Jackman: But what do you do with those people—

Mr. Ted Opitz: I actually have limited time, so excuse me; I want to move on to some other questions.

We often hear from the opposition that oftentimes somebody who's growing, for example, six marijuana plants will be deported without an appeal for their crime.

Well, first, they can always appeal that, as you know. Second, we had a witness recently who said, “Do you know how much marijuana comes from six plants?”

Do you know, by any chance?

Ms. Barbara Jackman: No, but I don't have a problem with that.

Mr. Ted Opitz: Well, it's a lot.

Third, our law would like to take into consideration that six marijuana plants were in fact used for trafficking. The judge will decide, via the police, what the actual use of that was going to be.

Drug trafficking is a serious crime in this country. Would you agree with that?

Ms. Barbara Jackman: Everybody has their own opinion. I myself don't think marijuana's a problem, sorry.

Mr. Ted Opitz: Okay, but that's not what I asked you. I asked you if you think drug trafficking is a serious crime in this country.

Ms. Barbara Jackman: Trafficking in drugs is a serious crime, but I don't think it necessarily means it should lead to deportation of someone who came here at two years old.

Mr. Ted Opitz: There's always a slippery slope with these things.

Would you agree that drug trafficking is often linked to organized crime?

Ms. Barbara Jackman: Yes, but we're not saying that you shouldn't deport some of these people. We're saying to let someone look at their circumstances to make that decision. Don't automatically deport.

● (1555)

Mr. Ted Opitz: That wasn't the question I asked, ma'am. I was asking if you believe that drug trafficking is often linked to organized crime.

Ms. Barbara Jackman: It can be for sure.

Mr. Ted Opitz: Okay, and drug trafficking is one of many crimes committed by individuals within organized crime.

Ms. Barbara Jackman: You know, people who are involved in drug trafficking and organized crime already don't get appeals to the immigration appeal division. They're already cut out through the two-year bar or the organized criminality bar. There are no appeals in those cases, so you're talking about the wrong kind of case.

Mr. Ted Opitz: I'm not necessarily.

Ms. Robin Seligman: There are a bunch of cases that get six months. I know you've raised the drug situation, but there are things like fraud under, theft under, threat to cause damage to property or injury to animals, mischief under. All those types of crimes can get a sentence of six months. We're even talking about conditional sentences. At a minimum, you don't want to include things like conditional sentences, for which there's no jail time.

Mr. Ted Opitz: You guys have spoken about potential impacts of the bill on families, but in this case, you're talking about families of criminals who are deported from Canada. In your opinion, though, what are the impacts to the families of the victims of those criminals? Have you assessed those?

Ms. Robin Seligman: It would depend on the crime, wouldn't it? When you're talking about theft under—

Mr. Ted Opitz: It could be fraud.

The Chair: Mr. Opitz, let her finish.

Ms. Robin Seligman: If you're talking about theft under, you have to balance the impact to the person concerned and the seriousness of the crime versus the impact of the person being deported and the impact to their Canadian family. Surely there's enough compassion in our system to allow some objective body, like the immigration appeal division, to look at all the circumstances of the case.

As Barb mentioned, some people have schizophrenia. They have mental illness. It's a one-off. It's out of character. They've been here since they were a child. They are the sole supporter of their family. If they leave, their family will go on welfare. If they leave, their children won't have a father figure. Surely we have enough compassion in our system for someone, some objective board—and I've given you the cases where they go positive and negative—to take an objective look at that and say that they think this person should be given a second chance.

We're not saying all people get to stay, and many times they don't get to stay. The most serious cases don't get to stay. They already don't.

Mr. Ted Opitz: In those conditions—

A voice: But some do.

Ms. Robin Seligman: Yes, and it happens.

A voice: That's what's wrong. That's why we're trying to fix it.

Ms. Barbara Jackman: Only the ones who have less than a two-year—

Mr. Ted Opitz: Again, why should they be allowed into Canada to commit crimes in the first place?

Ms. Robin Seligman: They came when they were children.

Ms. Barbara Jackman: They were only two years old.

Ms. Robin Seligman: We're not talking about people who come in as adults and commit crimes.

Mr. Ted Opitz: We're not all talking about everybody as a two-year-old.

Ms. Barbara Jackman: A lot of them are.

Mr. Ted Opitz: Hear me out—

Ms. Barbara Jackman: If this captures those two-year-olds—

Mr. Ted Opitz: —because you have to let me finish asking my question now.

Forget the two-year-olds for a minute. The fact of the matter is, if you come here as an adult, and there are a lot of examples of this, why should you be able to come into this country and commit a crime in the first place? We are compassionate—

Ms. Barbara Jackman: Then pass a law blocking adult offenders —

Mr. Ted Opitz: —but we shouldn't allow that.

Ms. Barbara Jackman: —people who come as adults and offend as adults, not the ones who came as kids or who are mentally ill.

Ms. Robin Seligman: In a lot of the cases that you'll see, they have come when they are children, so don't think those are just the one-offs.

We're not disagreeing with you. We're actually agreeing with you that some of these people should be removed from Canada. Barb has suggested detaining them. We're not saying to let them out on the streets. We're Canadians too. We have children too. We don't want to be victims of bad people, but everybody has a story. We're just saying to listen to the story.

The Chair: We have to move on.

Thank you, Ms. Seligman.

Now, representing the official opposition, Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

I want to thank our three presenters for putting a very human face on this piece of legislation, and for painting a picture of the impact of the human element for Canadians.

My colleagues across the table and I disagree on many things, but there are some things we do agree on. We all want to make sure that non-citizens who commit serious and often violent crimes are removed from Canada as quickly as possible. I don't think we have any disagreement on that.

That being said, New Democrats are very concerned that this bill concentrates even more arbitrary power into the hands of the minister. Even more so, we worry this legislation doesn't get to the heart of the problem of violent offenders who are able to remain in Canada for years, despite deportation orders.

For example, we've heard over and over again from witnesses, as well as Conservative members, about the case of Clinton Gayle, who brutally murdered Constable Todd Baylis of the Toronto Police Service. We now know that serious administrative errors led to the delay in removing this serious criminal. In fact, an appeal of his deportation order failed, but he was not removed because the immigration department lost his files. The immigration department even settled a multi-million dollar lawsuit with the Toronto Police Service because of the errors it made.

Let me be clear. It was not because the legislative tools weren't available to deport Mr. Gayle, but because the system failed. We can't keep using that case as an excuse to bring these overwhelming powers into the hands of the state.

Don't just take my word for it. During a federal inquiry into the Clinton Gayle case, an associate deputy minister was quoted as saying, “Quite simply, the system failed.” He then explained that the department's priority at the time was to target unsuccessful refugee claimants who were on the run rather than criminals, because that way the deportation numbers were higher. It's games.

The question is fairly straightforward. Can the three of you talk about how the current system could be improved without eliminating the right to due process that is being proposed in this bill?

● (1600)

Ms. Barbara Jackman: I think one way of doing it is by fast-tracking for appeals people who are considered to be dangerous.

The other thing is that the really serious criminals don't get appeals. They're already cut out if they have more than two years....

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

Do either of you want to add to this?

Ms. Robin Seligman: I agree. The system would work. In a lot of the situations where there was delay.... I'd like to clarify that delay by having a right of appeal is not a delay. People are entitled to due process. That's it; they only have one right of appeal to the immigration appeal division, and they're quite speedy on permanent residents with criminality.

If the board has the proper number of board members, they're heard quite quickly and expeditiously, and then the person is out. They go from jail to the board within several months, and that's it. Really, the system works. It's very unfortunate there is the odd one-off case, and there are not that many of them, that make the media. You shouldn't paint everybody with the same brush because, again, everybody has a story.

You're all members of Parliament and when you meet with your constituents, every one of you is going to have immigration concerns. A constituent may come to you and say, “I can't sponsor my spouse because when they were 19 they used false identification to get into a bar when the drinking age in the United States was 20.” Maybe a constituent's son is being deported. He never had a problem before but had trouble in school, or whatever, and hung out with the wrong kids temporarily and was drinking and driving and had a problem, or committed a theft. I'm not saying somebody wasn't victimized, but you have to look at the circumstances. Who was impacted?

Ms. Jinny Jogindera Sims: Thank you.

Do you want to add anything?

Mr. David Matas: Well, like Barbara and Robin, I've been around this system for a long time and I've seen a lot of changes. My experience is that the changes never quite work out exactly the way that Parliament intended. There is a lot of litigation where you get individual hardship cases. The system tries to adapt to them, but in generating the adaptation you end up with unintended consequences.

It takes a while for each new change to work itself out so it can cover the broad range of circumstances. As a result, new legislation often has a perverse effect, delaying removals rather than accelerating them, until the system generates a sensible result.

I saw that with the public danger opinion and many other changes, and—

Ms. Jinny Jogindera Sims: Thanks. We have a very limited time, so I want to be able to ask at least one more question.

Do you have any idea of amendments that could be made to this bill in order to achieve more balance between the principle of due process and the protection of Canadians?

Ms. Robin Seligman: I would like to say first of all, 100%, get rid of conditional sentences being included. Make it very explicit that a sentence of six months would exclude a conditional sentence.

I think that leaving the two-year bar is appropriate, and I'll tell you why. In the criminal justice system, two years is the time that delineates serious crimes, the point at which you get federal time versus provincial time, two years less a day. The criminal justice system has more expertise in this area and has said that anything greater than two years represents serious criminality. I would stick with that. That's why IRPA has the two-year provision to allow the right of appeal. Leave it to the experts in criminality.

Ms. Barbara Jackman: You need to carve out people who are mentally ill and people who've come here as children. If you're going to leave in this kind of provision, there should be exceptions for the board to look at cases in which someone is suffering from a mental illness or someone came as a child.

The other thing is that if you're going to leave in the misrepresentation five-year bar, it should be specifically for a significant misrepresentation, because once they put in the two-year bar, all of a sudden everybody who filled their forms out a little bit wrong was being refused for misrepresenting on the two-year bar. It has to be a significant misrepresentation.

● (1605)

Ms. Robin Seligman: Innocent misrepresentation should also be excluded. That's in cases where you don't even know you made the mistake.

The Chair: We have to move on.

Ms. Jinny Jogindera Sims: Thank you very much.

The Chair: For the Liberal Party, Mr. Lamoureux.

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

I have two quick questions, and then the witnesses can provide comment on them.

The first one is to pick up on the idea of examples for misrepresentation and increasing it from two years to five years. Hearing some tangible examples would be of benefit to this committee.

Second, I suspect we have at least one and a half million permanent residents living in Canada, those who call Canada their home. I'm wondering if you can also comment on this whole "under 15" or "under 10" situation and why those individuals should not be deported.

Ms. Barbara Jackman: I'll give you one example of a misrepresentation, and in fact it is quite a common example. People don't fill forms out carefully, so they will put on their form that they studied until April 2006 and their educational certificate will show that they studied until September 2006. That's a misrepresentation that results in a two-year bar. Now it will result in the five-year bar. It's not intentional.

In fact, in one case I pulled out all this old contract case law where the court absolved CEOs for not reading the contract properly at the time. People don't read things carefully, so people are now being caught by these provisions, since the two-year bar went in, for doing silly little things like that. It's being used for literally anything that doesn't match up.

Mr. David Matas: It's even worse than that, because you can be barred for misrepresentation even if you didn't know what you were saying was false. For instance, you could father a child and not disclose the child, and you might not even know you have a child, because you haven't been in touch with the woman since that started. That's a misrepresentation that can lead to a bar.

Ms. Robin Seligman: I have another example. I can tell you about one that's going on right now.

A Canadian citizen sponsored her husband from Bangladesh. They went to the interview in Singapore, and the officer asked the husband, "How did your wife meet your sister?" His sister was in Canada. He said, "I think they worked at a place called the Bay. They met when they were working." The officer called in the Canadian wife who happened to be there and said, "Have you ever worked?" She said, "No." He said, "You're refused for misrepresentation." They asked why. He said, "Because you didn't say you worked, or you didn't tell me you worked." She said, "I did work when I was in university. I worked at the Bay part-time, but I didn't think I had to put that down."

The Canadian citizen made the error, and they're barring her husband for two years. She's living in Bangladesh now, waiting for him to come over, because she didn't know to mention that she worked when she was a teenager.

These examples are not made up. They are not far-fetched. This is what's happening. Officers are going after everybody for any minor mistake. Now that bar would go from two years to five years. It has to be intentional. It has to be significant. The two years should be left alone. It's a very serious consequence.

Ms. Barbara Jackman: With respect to the ones who came as children, I know that the European court's premise was that it's essentially like exile or banishment. If your home, your community, your family is in one country and that's the only life you know, then to send you away as an adult when everything you know is in France or England is harsh. It's too harsh.

Mr. Kevin Lamoureux: Just to be clear on that particular point, every year thousands of minors would be coming to Canada as immigrants. What you are saying is that because they have called Canada their home for, in many cases, 10-plus years, they should be allowed to remain in Canada.

Ms. Barbara Jackman: No, at a minimum, if it's not....

I mean, I think they should be allowed to remain. I have seen too many cases of people who came at six months, two years, or five years, and who don't know the country they came from. I don't think those people should ever be deported. I think they should be treated as quasi-citizens or the old concept of denizens, in that they have a status in Canada because of being here so long.

If you are going to include them in the deportation class, for heaven's sake at least get someone to look at their case before you deport them. Leave the appeal.

Mr. David Matas: As I mentioned, for people who come here before 18 and who've been here at least 10 years before the crime, those cases all go to headquarters now if there is no appeal. You're not going to be saving any time by cutting those people out of appeals. Headquarters processing takes a lot more time, frankly, than appeal board processing, so this population will not be removed more quickly.

● (1610)

Ms. Robin Seligman: Perhaps I could make one final comment on that.

I know that members feel there's a lot of support for this bill, but I honestly feel that when you call it the faster removal of foreign criminals act, people don't understand that you're talking about their brother or their sister who never became a Canadian citizen. They don't think you're talking about permanent residents of Canada. They don't know the difference. I think if you put it out there and said that you're talking about permanent residents of Canada, people's next-door neighbour, their nanny, their friend, people would feel very differently about it.

The Chair: Thank you.

For the government, Mr. Menegakis. Ms. James.

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

Thank you as well to our guests today.

I want to touch base on the six months versus the two years less a day. You do recognize that throughout IRPA, some serious criminality is defined already as six months, and we're making changes to the one section with regard to the IAD. I've heard you mention many times that you think it's better to have the two-year requirement as opposed to six months.

I'm going to give you a couple of examples.

Jackie Tran is the first one I'm going to speak of. A permanent resident, in his late teens he was involved in crime in Calgary. His first conviction was at 19, for cocaine trafficking, in 2001. CBSA tried to deport him for six years. Despite having a long criminal record as a gangster and a major drug trafficker, he never received a single sentence of more than two years less a day. Therein lies the problem.

I have to ask you whether you think Jackie Tran was a serious criminal. That's the first question.

Ms. Robin Seligman: Well, I don't know about his particular circumstances, but it sounds like he—

Ms. Roxanne James: You're a lawyer—

Ms. Robin Seligman: I'm an immigration lawyer, not a criminal lawyer.

Ms. Roxanne James: You've never heard of Jackie Tran? I'm surprised.

Ms. Robin Seligman: No, I don't know his particular circumstances.

Ms. Roxanne James: I'm surprised.

Ms. Barbara Jackman: These people aren't infamous throughout the country.

Ms. Robin Seligman: We don't want to be adversarial with you. We're just trying to give you the other side of the story.

I know that you have your sound bites—you do the crime, you do the time—but people are individuals.

Ms. Roxanne James: Actually, that's not my personal sound bite. I don't—

Ms. Robin Seligman: Okay, but I'm going to give you—

The Chair: We're going to stop the clock.

Everybody take a deep breath.

It's getting a tad adversarial between the witness and you, Ms. James.

Ms. Roxanne James: Sorry, I just asked a simple question.

The Chair: Well....

Ms. Roxanne James: They didn't know who Jackie Tran was, so I was surprised. I thought I—

The Chair: Let's start again, okay?

Ms. Robin Seligman: I just said I didn't know the circumstances.

Ms. Roxanne James: Okay.

The Chair: Both of you, thank you. We'll start the clock.

Ms. Roxanne James: That's fine. I'll give another example.

Another person lost control of a vehicle and killed a pedestrian while street racing. I'm not going to mention the name, because you probably won't know this person either. He was given a conditional sentence of two years less a day and ordered deported from Canada in April 2003, but was not deported until April 2009. It took seven years to deport him due to multiple levels of immigration appeals.

This is the point we're trying to address. These people do not belong in Canada. They have committed serious crimes.

I listened intently to your speech. I have to say that I am actually very alarmed that you believe fraud, impersonation, and theft under $5,000 are a “minor sentence”, as you put it.

The reason I say this is that I actually have another example. Joselito Arganda came to Canada from the Philippines in 1995. I bring this to your attention because you mentioned specifically fraud and theft. This person was sentenced to two years in prison in 2007 for a wide variety of crimes, among them forgery, credit card fraud, possession of counterfeit money, and possession of goods obtained by crime. He reoffended after leaving prison, and was sentenced again, in 2009, for possession of property obtained by crime and for failing to comply with court orders. The following year, he was sentenced for possession of a weapon.

I'm alarmed that you think fraud and theft under $5,000 would be a minor offence.

Then, in the same conversation this first hour, you've indicated that you're very concerned that some of these people who may be deported may be the sole supporter of their family. I'm thinking of this particular person. If he was the sole supporter of his family, then it was through fraud, theft, impersonation, forgery, and so on.

I just have to put that on the table, because I'm very alarmed.

In the opening statement, you talked about Bill C-43, and the major problem you have is that we're taking away the appeal rights of permanent residents. I just have to ask this question: Do you think it's too much to ask permanent residents to not commit serious crimes here in Canada?

Ms. Robin Seligman: May I respond?

Ms. Roxanne James: Please respond to the last question.

Ms. Robin Seligman: The response is what we've been talking about for the past 45 minutes. It's addressing that issue, I think. What we're speaking to obviously hasn't got through.

There are many factors. Again I'm not saying people should be allowed to stay in Canada. I'm sure if your relative or your constituent were a permanent resident of Canada, and it impacted them so deeply.... I'm not saying they should be able to stay. I'm not the decision-maker. I'm not saying those offences aren't serious. I'm not a criminal court judge. Don't get me wrong. What I'm saying is someone should have an independent right of review.

As we said, we don't believe in the long delays. Those people should be detained; if they are serious criminals and there's extensive criminality, lock them up. I don't have a problem with that.

With respect to whether I think fraud is a serious offence, I didn't talk about somebody who committed offence after offence. I talked about someone who used false identification to get into a bar. I think you can go to any university campus....

● (1615)

Ms. Roxanne James: Do you really think false....

The Chair: Ms. James, let....

Ms. Roxanne James: Sorry, I have to stop. Do you really think that false identification—

The Chair: Ms. James.

Ms. Roxanne James: —in a bar is a serious offence? That certainly wouldn't warrant a six-month offence so I find that a little....

The Chair: Stop the clock for a minute.

Ms. James, could I have order, please.

Ms. Seligman was very patient. Let her finish her answer to your question.

Ms. Jinny Jogindera Sims: Point of order, Chair.

The Chair: Point of order. Stop the clock.

Ms. Robin Seligman: Thank you, Chair. I was going to say that using a—

The Chair: We have a point of order. We have to stop and listen to that next.

Ms. Jinny Jogindera Sims: Chair, we invite witnesses on both sides to come here. I think it behooves us, once we've asked a question, that the witness be given time to respond in a respectful manner.

The Chair: Thank you.

Ms. Seligman.

Ms. Robin Seligman: I was going to continue. Using a false or fraudulent document is an offence under section 368 of the Criminal Code and carries a maximum potential penalty of 10 years. A 20-year-old permanent resident who is convicted of using fake identification to get into a bar while visiting the United States is inadmissible under IRPA because of a foreign conviction. Even if they got no penalty, or a $200 fine, they would be inadmissible to Canada no matter if they spent their whole life in Canada. It is a criminal offence.

Ms. Roxanne James: When we talk about immigration, obviously Canada is one of the most welcoming countries. We've had the highest immigration levels in the last number of years.

I would have to think if we're going to admit people into Canada, we want them to succeed. The example you gave, although it's talking about someone going into a bar under age with false identification, I would have to say if we're going to choose the people who come into Canada, I would certainly want to choose the people who are most law abiding.

Although you have given that example, I think it's a pretty weak example. Again, if I'm going to choose one person over another, I would always tend to pick the person who's always law abiding. I think that's what most Canadians would expect with regard to the immigration system.

Ms. Robin Seligman: We're in agreement on that.

Ms. Roxanne James: Thank you.

The Chair: You have a minute, Ms. James.

Ms. Roxanne James: Thank you.

The possession of marijuana and growing six pot plants, came up. My colleague from the NDP brought up the subject of Todd Baylis.

What are your thoughts on whether marijuana should be illegal or not, or whether you think it's involved in drug trafficking?

We had a representative from the Toronto Police Association in our last session. He was speaking with regard to the Todd Baylis issue. My father was a police officer so I remember that particular case. Clinton Gayle was a convicted trafficker of crack cocaine. I asked the representative from the Police Association whether instead of crack cocaine it could have been marijuana drug trafficking, and he said absolutely yes.

Whether your personal philosophy on marijuana is yes or no, do you recognize that marijuana is used in drug trafficking?

The Chair: We have to move on, Ms. James. Thank you.

Madame Groguhé.

[*Translation*]

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

I would like to thank the witnesses for being here today.

Many witnesses have been very concerned about a number of provisions of Bill C-43. What aspects of this bill do you think contravene the Canadian Charter of Rights and Freedoms and the international conventions that Canada has signed?

Could you please give us more detail about that?

[*English*]

Ms. Barbara Jackman: Taking away the humanitarian discretion for persons who are barred under sections 34, 35, and 37, taking away the appeal right may in some circumstances be seen to violate the charter, and they can violate it both in respect of section 7 issues around risk and section 7 in relation to children and family rights. That's the European court case law, based on the one that says you can't deport people who came as children. It's based on family rights.

● (1620)

Mr. David Matas: I would say that the charter plays into how the law is interpreted and applied, and the government has to apply the law in a way that is consistent with the charter. Of course, Barbara Jackman is right. If you remove humanitarian discretion, it violates the charter, as a result of which we're going to have to relocate the humanitarian discretion from the board to the officers who make these decisions about reporting and referring.

I've seen it happen with the shift from public danger to two years. They end up having interview after interview. They collect documents. This can go on for months, and frankly much longer than the appeals. That's why I say this law is not going to lead to faster removal. It's going to shift the humanitarian jurisdiction to the bureaucracy, which is going to function less efficiently and more slowly than the board is functioning now, and that will be as a result of the charter.

[*Translation*]

Mrs. Sadia Groguhé: Clause 8 of Bill C-43 proposes giving new powers to the Minister of Citizenship, Immigration and Multiculturalism. One witness expressed concerns about these new powers.

What does your organization think about these new powers?

[*English*]

Mr. David Matas: Barb, I think you were speaking.

Ms. Barbara Jackman: In regard to the three-year ban for public policy reasons, the legislation allows the minister to ban people for real reasons, not for vague reasons like public policy. I don't know how it would be applied, but having seen the way legislation gets applied in practice over time, it never is what it was intended in the first place. I have no doubt that the public policy grounds will lead to denying people admission on the basis of speech.

Mr. David Matas: There's one thing I wanted to raise from what I've heard. There's this assumption that this legislation actually leads to greater protection against criminality, but that assumption is based on the fact that somebody is reported, detected, tried, sentenced, and convicted. Many victims are people who are known to the perpetrators and you get reporting because the victims want the perpetrators to be stopped, but they don't necessarily want to have the perpetrators deported. Spousal abuse is a good example of where the victim will want the abuser stopped, but may not want the abuser deported. Once you increase the likelihood of deportation for these crimes, you decrease the likelihood of reporting and increase the danger to Canada.

Ms. Robin Seligman: On a related matter, I was going to add that I have spoken to the criminal bar on this and they're very concerned because right now, as I said, 80% of cases are pleaded to. Pleading will stop in these cases because they could not take a chance. There's going to be a backlog. There are going to be charter issues that are raised with delays in hearings. They're very concerned about it because there's absolutely no incentive to plead.

[*Translation*]

Mrs. Sadia Groguhé: With respect to these accelerated deportation orders, could you give us some specific ideas for improving this bill so that it takes into account human rights and the Charter?

[*English*]

The Chair: Very quickly, please.

Mr. David Matas: First of all, I stand behind what I said originally, that clause 24 should be dropped. I don't want to take a contrary position, but I would say in the alternative I think one of the things that could be done is to remove this foreign conviction or the foreign crime where there's no conviction and proof is less than the balance of probabilities. That's one thing.

Another thing is what's in the manual now. If somebody came here before the age of 18 and has been here for 10 years or more, these are very particular cases, which already in the manual, in the system, are treated in a different way. That could be in the legislation.

The Chair: Sorry, but we have to move on.

Mr. Dykstra and Mr. Menegakis, you have until the end of the hour.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you. I'll try to make sure that I leave some time for Mr. Menegakis.

I do appreciate your being here. I do appreciate the dialogue in terms of those who are 100% in favour of what we're doing in terms of moving forward with the legislation, and those who may find issues around some of it. I also appreciate the fact that you've acknowledged that changes are necessary and those who are serious criminals and do not have citizenship here in this country should not remain in this country.

The principal argument you're making is that there should be reasonable grounds for appeal for those individuals who may have issues. You pointed out a couple of circumstances. One was the issue around mental health. The other was around those who are minors who have lived here for a number of years and may not have Canadian citizenship and should therefore be granted.... You used an expression I haven't heard in a long time, Ms. Jackman, but it would give those individuals the ability to perhaps not have Canadian citizenship but at least to be treated as if they were in that same regard.

There are a couple of things. I don't think they're red herring arguments, but I think you would have to agree that they do not make up a majority of the cases we're talking about today.

● (1625)

Ms. Barbara Jackman: It's probably not a majority, but it's a significant number.

Mr. Rick Dykstra: I'm not trying to corner you. I'm just trying to be clear that there is some agreement on moving forward to make sure that serious criminals who are not part of this country don't stay in this country. They don't deserve to be here. They haven't earned the right to be here. I appreciate that.

I have a couple of questions on the mental health side.

Robin, you made the point that there needs to be some sense of compassion in the decisions that are made. We've had presenters submit that, in fact, our judges are instructed to and do take into account issues such as mental illness when they are listening to cases. It seems to me you're suggesting that when mental health becomes an issue with respect to the crimes that may have been committed by the individual, a person's ability to appeal or be heard fairly isn't within our justice system, that it's at the IRB. I'd like to get some clarification from you on that. I have to say that I disagree with you on that point. I think fairness is involved. I think judges, and juries when they are there, take into account someone's personal capacity to understand the crime he or she has committed.

Ms. Barbara Jackman: Well, that's a very fine line. You can have people who are convicted because they didn't raise the mental health issue in the criminal trial. That happens quite a lot, because they don't want to end up in an institution for mental health problems instead of getting six months in jail. Six months in jail is a lot easier. That's a problem.

Mr. Rick Dykstra: I am enjoying very much the presentation today. I'm not trying to interrupt and take you in a different direction —

Ms. Barbara Jackman: Yes, that's fine.

Mr. Rick Dykstra: —but I do want to challenge you.

You're both lawyers. You both understand that your responsibility is the best interests of your client, regardless of what your personal feelings towards the client may be. Why in heaven's name would a lawyer representing the individual, who knows that this individual has mental health issues, make a determination to not bring that up as an issue to be presented in court so that the judge understands in a clearer and more compassionate way that the individual has mental health problems? What do they fear more?

Ms. Barbara Jackman: It could be an indefinite sentence. These guys aren't immigration lawyers. They're criminal defence counsel, and they don't plead. They don't raise it a lot of times.

Ms. Robin Seligman: They plead. About 80% of the cases are pleaded to, and it's criminal.

Mr. Rick Dykstra: I want to come back to that, because I have a question on the issue of pleading.

Mr. David Matas: I wonder if I could interject here.

The immigration threshold has an impact on sentencing. I've seen it with the two years. Now you get two years less a day, because the consequence of two years would be no appeal. In fact, if you don't know the immigration process and you don't raise it in sentencing, it's grounds for a sentencing appeal, and you get appeal courts reducing sentences. That's going to happen with the six months.

This is another perverse effect of the legislation. The legislation will lead to reductions in criminal sentences. Is that what you want?

Mr. Rick Dykstra: It's actually in opposition to what Robin has indicated in terms of the pleading of cases. Look, I appreciate a system that has compassion. It needs to have it. It has to have it. Every single justice system that doesn't is one all of us would work against. I have no doubt about that in my mind. The fact is, though, that cases should be heard. Lawyers have made a determination with the crown that pleading cases can reduce the sentence of an individual so that the person doesn't face the ramifications of what he or she potentially should be facing.

You make the point about the crowding up of the courts. I don't think I can disagree with you on that, but I have to say that if the crowding up of courts leads to a system where cases are heard, cases are presented, and cases are judged, how can that be a bad thing in terms of whether we should expedite the issue by trying to plead a case?

● (1630)

Ms. Robin Seligman: We're not criminal lawyers, just to let you know. We're immigration lawyers. We're not the ones arguing and raising those cases in criminal court.

Mr. Rick Dykstra: I was just pointing out that this was the argument being made.

Ms. Robin Seligman: Yes, but I have spoken to very senior criminal counsel, and they have all confirmed that the system would grind to a halt. The system is predicated on the fact that 80% of cases will be pleaded to.

The benefit and the beauty of the immigration appeal division is that they can look at all the circumstances, not only the mental illness, if it comes up at that time. They can look at the best interests of children, the length of time they've been in Canada, and all those things. Really, it's not the area a criminal court should be looking at.

Ms. Barbara Jackman: You're going to say, and you're right, there is humanitarian discretion, but not for security-related or organized criminality, the street gang things. There won't be any humanitarian discretion for those cases, but there is for the criminals. What David's trying to point out is it takes a long time. We end up in court, and I'll tell you, it's a lot easier to challenge an immigration officer's decision than it is to challenge the immigration appeal division.

I have one guy who has been found to be a danger. He has been detained the entire time. I've been to court four times, and I'm on my fifth time. I've won the previous four times.

The Chair: Our time has come to an end. I'm sorry, Mr. Dykstra.

Mr. Rick Dykstra: I had a question for David, but I understand.

The Chair: I'm sorry.

Mr. Rick Dykstra: Just a clarification—

The Chair: The hour is over.

Mr. Matas, Ms. Seligman, Ms. Jackman, thank you very much for your presentation. It's been helpful, and I'm sure the committee members will listen to your words.

We will suspend.

● (1630)

(Pause)

● (1630)

The Chair: I call the meeting to order.

In the next hour we have Mr. Martin Collacott, who is representing the Centre for Immigration Policy Reform. Mr. Collacott has appeared before this committee many times, and on Bill C-31 dealing with backlog and security issues.

The other two witnesses are Mr. Lorne Waldman, who is the president of the Canadian Association of Refugee Lawyers, and Mr. Angus Grant, who is a lawyer with that group.

I welcome the three of you to the immigration committee. We look forward to hearing your presentations.

Mr. Waldman and Mr. Grant, you have 10 minutes between you.

● (1635)

Mr. Angus Grant (Lawyer, Canadian Association of Refugee Lawyers): Thank you very much.

Distinguished members of the committee, it's nice to be back here, and it's even nicer to be here in person. I testified last month via video and it's much nicer to be here in person.

Mr. Waldman and I are both going to speak to Bill C-43. I will begin by expanding on the comments I made last time around, on security provisions, although this time with particular reference to Bill C-43.

I have no doubt that the proponents of this bill believe, on some level, that the changes that it makes will increase Canadian security. I'm going to talk about security, with reference to sections 34, 35, and 37, although I'm going to focus on clause 34. While I have no doubt that is the case, the position I would like to put to you today, which is also the position of the Canadian Association of Refugee Lawyers, is that this will categorically not be the case, and I'll explain why.

Bill C-43 makes two principal changes to the security inadmissibility regime and to the regime for determining inadmissibility under section 35 and section 37. First, it eliminates the ministerial waiver provision, such as it was, and replaces it with a new provision that will be found at proposed section 42.1 of the IRPA.

The second thing it does, which is something that Ms. Jackman talked about, is that it categorically and with no exception eliminates the possibility for obtaining a humanitarian and compassionate review of an inadmissibility finding under these provisions.

I'll speak about both of these changes, but in turn I want to reiterate something I said to you last month, and that is there is no doubt it's unambiguous and categorical that section 34 of the IRPA captures people who we would all agree are innocent of any moral or legal wrongdoing. This is not, as I said, a controversial point. It is something the Supreme Court of Canada has recognized in Suresh, in talking about the waiver provision.

Frankly, as refugee lawyers, we have all been in hearing rooms where the issue of Canadian security has not arisen because it is a given that Canadian security per se is not of concern to these proceedings. The problem is that people get caught under other areas of these provisions that don't actually touch on the specific issue of Canadian security.

I don't think we should have a conversation today about the fact that this is solely about Canadian security per se, because it's about much more than that, and people who do not actually pose any threat to Canadian security get caught under these provisions.

The second preparatory remark I should make is that as we all know, the parameters for finding someone inadmissible under sections 34, 35 and 37 are extremely broad. Whereas in criminal law there is the requirement that to find someone guilty we have to establish that they are guilty beyond a reasonable doubt, in immigration law we don't even have to find that they have done an act on a balance of probabilities, in other words, a 50% plus 1% chance that the person committed an act that is proscribed by the IRPA. All we have to show is that there are reasonable grounds to believe that an individual committed an act or was a member of a group that committed an act that is proscribed by the bill.

We can believe, for example, that someone probably didn't do an act, that there is a greater than 50% chance that someone didn't do an act, but because all we have to have are reasonable grounds to believe that someone did it, i.e., that there is less than a 50% chance, then that person can be found inadmissible.

We know that wrongful convictions happen in criminal law with criteria of proof beyond a reasonable doubt. Think about how many people, then, could potentially be wrongfully found to be inadmissible when the standard of proof is so much lower.

With regard to the changes that are being made, first of all, the shift of the ministerial waiver provision that used to be at subsection 34(2) and will now be at proposed section 42, is essentially unchanged except for one bizarre provision that it's your task to consider and try to make sense of. This is proposed subsection 42.1 (3) of the new IRPA, and it is under clause 18 of the bill.

The minister, in considering a ministerial waiver of inadmissibility will now have to make sense of the following provision:

> (3) In determining whether to make a declaration, the Minister may only take into account national security and public safety considerations, but, in his or her analysis, is not limited to considering the danger that the foreign national presents to the public or the security of Canada.

There are four things I want to say briefly about this provision. First, it doesn't make any sense, and I think you really need to grapple with this, because it's an important provision. It says that the minister must only take into account public security, but may look to things beyond public security. On its face, I think this is something that is going to make the judiciary apoplectic about what in the world this means. It's extremely poor legislative drafting, and it's going to cause a whole world of problems for anybody who is tasked with interpreting it.

I think I know what they were getting at in drafting the bill this way, and that is that the minister wants to have his cake and eat it too. He wants to say, “You can't force me to look at anything but security, but I don't want to be forced to look only at security because I recognize that many of these people are not actually security threats. I want to look at anything else I want to look at as well, to render my decision. I don't want to be bound by security, but I don't want you to be able to force me to look at things beyond security.” In an Orwellian way, this is the only way I can make sense of this provision.

● (1640)

The other thing that is remarkable about this provision is that it is being made and put forward to you at the exact time that the meaning of subsection 34(2) is under review by the Supreme Court of Canada. In the case of Agraira, which was argued just a couple of weeks ago, these exact considerations, the lawfulness of a ministerial waiver and the role that a waiver has to play within the larger inadmissibility regime, are before the court. The lawfulness of it is before the court. I would submit that it is an act of legislative bullying, almost, to suggest to the Supreme Court of Canada to legislate on an issue the lawfulness of which has not even been established yet.

That's all I'll say about the waiver provision.

I'm going to move on, very briefly, to the elimination of humanitarian and compassionate relief.

Mr. Rick Dykstra: Mr. Chairman, I have a point of order.

Mr. Grant, I know you have only a bit of time. You said you had four points to make with respect to section 18. I heard one, and you really did a good job describing it. What were the other three?

Mr. Angus Grant: I'm happy to elaborate on those in response to questions. I'm going through it quickly because I thought I had 10 minutes, and now I realize I have only five. But I'm happy to elaborate on the four reasons.

Mr. Rick Dykstra: Sorry, Mr. Chair.

The Chair: Actually, you have three left.

Mr. Angus Grant: I have three minutes. Oh, I've had seven. So I'll wrap up—

The Chair: Two of you are sharing 10 minutes. You have three minutes left between the two of you.

Mr. Angus Grant: Okay, I'll stop right there. I'm happy to talk about the humanitarian waiver provision in the questions later.

Mr. Lorne Waldman (President, Canadian Association of Refugee Lawyers): Given that I have three minutes, I will make two brief points.

First, I want to take up the discussion from last time. I just want to make it clear that if the goal is to speedily remove foreigners from Canada, I don't think the provision in the subsection 64(2) amendment will be effective. It will create a whole series of other problems, other obstacles, and other challenges.

There are other legislative innovations Parliament could have chosen that would have been far more effective in achieving the objective. The real question is, why has it taken so long? In the examples you gave, if we were to analyze each one of them, we could easily explain to you why it takes so long. There are different reasons and different explanations. Of course historical examples aren't always helpful. Things have changed and policies have changed, especially in immigration over the course of the last few years. What happened 10 years ago is not any way indicative of what's happening today. The reality is different.

I do want to make a point, because I don't think many other witnesses will speak about it. I'd like to speak about the provision that allows for CSIS officers to conduct interviews. I make this point because CSIS officers now conduct interviews all the time, and they do it without having the legal authority. I don't think it's a bad idea that if CSIS officers are going to conduct interviews, they be given the authority to do so. My concern, however, is that when you embark upon this road, you have to realize that it's unprecedented to give CSIS officers the power to compel people to answer questions, because they've never had that power, and it's inconsistent with their role, some would say, as intelligence officers.

The other important fact is that if they are going to have this power, and given that applicants will be under a duty to answer questions truthfully, and if they don't answer questions truthfully they can be subject to prosecution under the act, it's vitally important, given all of the different disputes we have had over time as to what was said and what wasn't said in an interview, that there be a directive in the legislation, a requirement that the interviews be recorded.

There have been, in the past, many different situations. I've had clients and other counsel have had clients where there have been serious factual disputes about what was said and what wasn't said. If there's going to be a duty to answer questions truthfully and a person can be subject to prosecution for not answering questions truthfully, then there has to be a record kept of the interviews.

Given that I had three minutes, that's about all I can say.

● (1645)

The Chair: You did well, Mr. Waldman. Thank you.

Mr. Collacott.

Mr. Martin Collacott (Spokesperson, Centre for Immigration Policy Reform): Thank you, Chair. I'm going to comment on two aspects of the bill that have attracted a lot of attention.

One is the provision that gives the minister the authority to use negative discretion on who may enter the country, and the other is the accelerated removal of individuals convicted of serious crimes.

With respect to the first, the arguments have been that this gives the minister too much power. Someone mentioned in an earlier session that all the opposition is in favour of positive discretion, but they don't like giving the minister the same authority in negative discretion, and yet this is the case with other democratic countries such as Australia, the U.S.A., and so on.

I don't quite understand where the minister gets too much authority because he's already responsible for all the decisions made in his department to begin with. I think the concern is that this will politicize the situation. Policy is already a consideration in all the decisions in the United States and Australia. They specifically mention foreign policy considerations. I don't think that's the concern of the opposition. It's that there will be partisan politicization in Canada. That's always a risk in decisions, but the minister is accountable to Parliament and has to answer for decisions, and he was challenged in the case of George Galloway coming in, for instance. I think there's already provision that he should be able to make those decisions, and if people don't like it, they can challenge it. I would say that any minister, whether from the current governing party or one of the other parties in the future, should have the same power.

Every country in the world refuses entry to all sorts of people all the time. That's their right as a sovereign nation. Therefore, I can't get too upset or too concerned about the amount of authority being given to the minister.

I'll move on quickly to one of the more contentious parts of the bill. It has to do with the accelerated removal of non-Canadians. One of the reasons it's so difficult to remove some of them, and I'll cite a few cases, is that many of them claim refugee status if they're ordered deported, and our refugee system is still in a very dysfunctional state.

Some of the more egregious examples have already been given in previous sessions. Mahmoud Mohammad Issa Mohammad was a convicted terrorist who entered Canada under a false name. His real identity was discovered, and he was ordered deported in December 1989. He claimed refugee status and that gave him access to all sorts of appeals and reviews. He's still here almost 24 years after being ordered out. The last objection I can remember to his being ordered removed was that if he were sent back to his native Lebanon, he'd not receive the same standard of health care he gets in Canada, to which the government replied that there's good health care available in Lebanon but he'd have to pay for it. I believe he's a client of Ms. Jackman's, so I can well understand why she would be sympathetic to lots of humanitarian and compassionate scope in the appeals. So far, his appeals and reviews are estimated to have cost Canadian taxpayers around $3 million.

You're probably all aware of the case of Leon Mugesera, who's a Rwandan deemed to have been a war criminal. We finally got him out of the country after 10 years. A more recent one is Jean Léonard Teganya, also a Rwandan war criminal who was finally deported, I think after another 10 years, because of all the appeals that are currently possible under the system.

A more garden-variety case was that of Van Thanh Nguyen, who was ordered deported in 1995 for a series of crimes, including the armed robbery of a milk store in Guelph, Ontario, during which he locked the store's elderly owners in a cooler after stripping them of their jewellery. He was ordered deported. He committed four more crimes. Now he's trying to stay in Canada on the basis that we gave him a kidney transplant, I guess it was, and the anti-rejection drugs are expensive and if he has to go back to Vietnam, he'll have to pay for all those drugs rather than have the Government of Ontario pay for part of them. I don't know if he has claimed refugee status yet, but that will certainly be a humanitarian and compassionate appeal, if he does have one.

I was going to speak at some length on the Charter of Rights and Freedoms, because that has been invoked several times. One of the reasons the refugee system is in such a mess is the bad wording of section 7, which says that everyone has the full right to Canadian justice, rather than specifying Canadians or Canadians and permanent residents.

A very senior official, Jack Manion, a former deputy minister of immigration, strongly advised the government not to put in everyone. The government told him at the time that there wasn't going to be a problem. Well, there was a problem.

● (1650)

There was an appeal in 1985, commonly called the Singh decision, whereby four refused refugee claimants said, “We're everyone”. Since that ruling by Justice Bertha Wilson, all refugee cases can be appealed, and the appellants get the full bells and whistles of Canadian law. That's partly why we have all these extensive appeals.

I'll wrap up with a couple of points.

One was the point made that there is no sufficient possibility of appeal now if people commit a crime for which they get six months —a serious criminal. I will make two comments. One is that while they would not be permitted to make an appeal to the IAD in this situation under the proposed legislation, they could certainly appeal to the criminal system. Of course, this will give a lot more work to criminal lawyers than to immigration lawyers, but clearly the criminal court takes into account more than just the straight crime. The very fact that sentences have been passed down for two years less one day so that they are not up for deportation shows that these things are considered. There is ample opportunity through the criminal system to make appeals of that sort.

The difference will be, and I think Mr. Matas pointed it out, that this can slow down the system just as much as an appeal to the IAD. The problem is that under the present system, if you appeal to the IAD and you are turned down, you can ask for leave to appeal to the Federal Court. That kind of situation, plus the H and C reviews, is why Mahmoud Mohammad Issa Mohammad is still here after almost 24 years. There are serious issues that have to be dealt with.

I have one final comment on the question of whether six months is too low a threshold. Various theoretical examples were cited as to when someone could be deportable because of what they considered a minor crime. I will cite to you a report from yesterday's *Province*, which is a Vancouver paper.

This was someone sentenced in the Supreme Court of British Columbia for speeding, driving recklessly and aggressively, and losing control of his vehicle. His car went airborne, came down and crashed, and killed another driver. He was charged with dangerous driving causing death. He had already had 17 infractions in some fairly serious cases. For this he got three months.

While it's all right to talk in theory about cases that might seem unfair, this is a concrete case. That's what he got: three months. I don't know whether he is a Canadian citizen; the issue of deportation didn't come up. There can be quite a gap between the examples of non-serious cases for which you can get six months and the reality of the situation, and that is spelled out by this particular case.

Chairman, I usually go over time, so I am going to behave myself today and stop now. I think I am still within my 10 minutes.

The Chair: You are, and I thank you, sir.

The government is first, with Mr. Weston.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): Thank you, Chair. Thank you, gentlemen, for joining us today.

It always seems so challenging to try to balance these things. We're looking at humanitarian and compassionate issues and we are looking at security.

Since you spoke last, Mr. Collacott, I want to put my question to you.

As I have been listening to the various accounts of different cases, the ones that alarm me the most are those that relate to a country I have visited, Rwanda; cases of people who are war criminals, and you mentioned two of them, who are able to apply for humanitarian and compassionate consideration and then delay indefinitely their deportation from Canada.

That practice alarms me, because it calls into question our whole humanitarian and compassionate approach. It mocks it and suggests that Canadians may lose faith in areas in which we ought rightly to be giving people humanitarian and compassionate consideration in the judicial system, the immigration system, and elsewhere.

Can you elaborate on this matter of allowing war criminals to use the humanitarian and compassionate approach? This will be dispensed with under Bill C-43, and I would like you to comment on how that strikes you.

● (1655)

Mr. Martin Collacott: One of the means used particularly by refugee claimants to extend their stay here is to stay as long as they can with as many appeals as possible. They're likely to have stronger grounds for a humanitarian and compassionate case the longer they stay here. They may marry a Canadian or very often their children are growing up in Canada and they try to use it as a justification for not being sent back.

It may sound harsh, but if they want to keep their family with them, the family can go back too. I can understand, in a way, the desire to be sympathetic towards children who weren't involved in these things. The fact is, if someone comes here as a war criminal and is a serious case and we have to send them home, they've got the option of taking their family with them. I cannot see Mahmoud Mohammad Issa Mohammad being able to claim that he should be able to stay here—he's a convicted terrorist—because he'd have to pay for his own health care. I don't know what happened to that claim. He probably wasn't successful, but he is still here.

Some of these cases can tug at your heartstrings, but I think you have to be reasonable and balanced. Removing the H and C is perfectly reasonable when you look at the whole picture.

Mr. John Weston: Let me switch to another place where this competes.

Ms. Seligman related to us a hypothetical case where somebody who has grown up in Canada goes across the border and uses false identification to get into a bar in the United States. They are then charged under a category that could attract 10 years' maximum imprisonment in the United States. We have other cases. Some of them are high-profile cases where people have been charged and convicted of crimes that could attract the 10-year sentence. The change in Bill C-43 that I'm about to refer to would make it impossible for somebody who is charged with a crime that could result in a 10-year sentence or more to come in.

What do you think about that?

Mr. Martin Collacott: Are you talking about people who are refused entry, or are you talking about people who could be deported?

Mr. John Weston: I'm talking about people who are deported.

Mr. Martin Collacott: Rather than those who are refused entry. I wasn't clear on which aspect. They've been charged with a sentence of—

Mr. John Weston: Something that can attract a sentence of 10 years.

Mr. Martin Collacott: It would have to be a charge that would, I believe, get 10 years in Canada. Although it's a charge overseas, it would have to be something quite serious in Canada for them to be subject to that. Am I correct in that, or the law?

Mr. John Weston: That's right. Under Canadian law, you'd be punished with a sentence of 10 years or more.

Mr. Martin Collacott: Yes, it would have to be a pretty serious action.

If someone is sentenced to 10 years in some country for something they wouldn't be charged with in Canada, then that issue wouldn't arise. If someone committed a crime in another country for which they would get a 10-year sentence in Canada, that is pretty serious stuff. Again, if someone were convicted for that in Canada, they can appeal it.

Would you like to give me a concrete case?

● (1700)

Mr. John Weston: Lawyers like to look at these things and sometimes we get lost in the process.

What Canadians want to do is support an immigration system where we don't bring in people who are charged with crimes like kidnapping, assault, armed robbery, rape, and offences that attract a sentence of 10 years or more in Canada. We're changing the rules under Bill C-43 to keep those kinds of people out and to make sure that if they're here, they can be deported more quickly.

Mr. Martin Collacott: To me, the part about not granting them entry is pretty cut and dried: when they've been accused of something that could have a 10-year sentence in Canada. Removing them is perhaps a little more complicated because they're already here.

In general, if someone has been charged with a crime abroad for which they could be sentenced to 10 years in Canada, to me that's pretty serious and is grounds for having them removed.

The Chair: Time has expired, Mr. Weston. I'm sorry.

Ms. Sitsabaiesan.

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

The government needs to address the lack of training, resources, and integration of information and monitoring technologies within the responsible public service agencies. Auditor General reports on Citizenship and Immigration, as well as on CBSA, over and over again have highlighted a lack of training, resources, and integration of information and monitoring technologies, which of course doesn't allow for the adequate enforcement of already existing legislation. Now we're also seeing funding cuts to the Canada Border Services Agency.

All of these problems put Canadians at risk. The government needs to address the lack of training, resources, and integration of information and monitoring technologies within the responsible public service agencies.

My question is for Mr. Waldman. What role has the government's inability to effectively track, detain, and remove serious non-citizen criminals through the appropriate federal agencies played in this issue?

Mr. Lorne Waldman: It's interesting that you make that point, and I think it's an extremely valid one. We're talking about the speedy removal of foreign nationals, the faster removal of foreign criminals act. Everyone agrees that foreign criminals who have committed serious offences should, if they deserve it, be removed speedily.

The difficulty is that many of the delays we see in the process have nothing to do with what happens at the Immigration and Refugee Board but are delays built in to the other stages in the process. Sometimes a person is convicted and it will take months and months before a report is written under section 44 of IRPA, because there are not enough officers to write reports. Then, if the person is a permanent resident, he's usually called in for an interview, at which he is given the opportunity of making a submission, which is then reviewed by a senior immigration officer.

The witnesses who spoke previously, Mr. Matas, I think it was, talked about all of the delays that are occasioned by the procedures that precede the actual admissibility hearing. Then, sometimes there are delays in admissibility hearings due to the unavailability of minister's representatives.

If you're talking about speedy removal, you need to make sure there are sufficient resources throughout the process. What we see persistently is that many of the delays are part and parcel of an inadequately resourced Canada Border Services Agency.

Before we start talking about eliminating appeal rights as a means of moving people through the system more quickly, the biggest delay, which happens sometimes, is in scheduling appeals. Why do we have delays in scheduling appeals? There aren't enough members to sit on appeals. If we want to have people removed quickly, that could be done if we had sufficient people to hear the appeals.

Ms. Rathika Sitsabaiesan: We've had auditors general talk a lot about the lack of proper resourcing for CIC and CBSA. We're also learning this from you right now, and from previous witnesses as well who have said that not having members of the IRB available has been a problem with scheduling appeals. This is not the first time we've heard this.

Mr. Lorne Waldman: It's not only scheduling appeals; it's scheduling admissibility hearings.

Ms. Rathika Sitsabaiesan: Right, and resourcing the IRB better would also help.

Mr. Lorne Waldman: It's the immigration division too. It takes months and months. In Toronto, if you want to get a deportation hearing involving someone who's allegedly a terrorist, or an organized criminal, or something like that, it can take six months to a year before you get a hearing date scheduled. I have clients for whom we got reports a year ago, and we're only now getting notification of scheduling. If they're not detained, there are huge delays.

It's a bit hypocritical for the minister to say that we have to speedily remove all these dangerous people, when it takes them years to process...and get to the point where they can be removed.

● (1705)

Ms. Rathika Sitsabaiesan: That's another area that needs proper resourcing.

You have led me right into my next question, which is, if the government had been diligent about harmonizing efforts and integrating resources at CIC and CBSA, and probably also the IRB, and about adequately equipping our law enforcement agencies, would we need this highly punitive legislation that's before us today?

Mr. Angus Grant: No.

Ms. Rathika Sitsabaiesan: Do you want to say that with your microphone on?

Mr. Angus Grant: The answer is clearly no. The landscape would look incredibly different, if all of the factors you listed as being absent in the Canadian immigration regime were present. The pressures we see would not be present, and therefore, the clear answer to that is no.

Mr. Lorne Waldman: Could I add one point on that?

We've been given a lot of historical examples in terms of how it took years for this, and years for that. My friend cited the case of Mr. Mohammad. Let's be totally clear. Undoubtedly the immigration system has been dysfunctional for a long time. There have been huge delays, and all of these delays are the result of inadequate resourcing and some silly policies.

But to be honest with you, if the system....

To give you another anecdotal example, we're talking about spending millions of dollars to create a new refugee system. I'm seeing people come into my office today who have made refugee claims, who have had their hearings and have been rejected and are being removed within a year under this system. Once you've staffed the system and you get it working properly, it functions.

The bottom line is, if we staff the system and get sufficient resources, we can allow for all of the necessary safeguards to allow for fair hearings and still have people removed speedily.

Ms. Rathika Sitsabaiesan: Thank you.

A member opposite, Mr. Weston, is a lawyer as well. Our witness from the last panel, Ms. Robin Seligman, read the section from the Criminal Code itself. It wasn't her own personal testimony. She was reading the Criminal Code. It's interesting that it's clear in the Criminal Code, and it is up to the adjudicators to be the ones who make these decisions on people's admissibility into this country. It's not really for us politicians or even lawyers to make those decisions. It's really for the unbiased adjudicators. Is that not correct? Would any of you agree with my statement on that?

Mr. Lorne Waldman: If you're talking about who determines whether people are admissible or not, it's up to the member interpreting the law, and if it involves a foreign offence, interpreting the foreign offence and seeing if it's equivalent to an offence in Canada, comparing the Canadian and foreign offences. I think that's what the point of the evidence was. With someone convicted in the United States, you compare the American offence to the Canadian offence. That's the job of the member to do that at the immigration division.

The Chair: Thank you, Mr. Waldman.

Mr. Lamoureux, go ahead.

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

I want to pick up on Mr. Waldman and the member's question.

It's interesting. If you ask the minister, and he's had the press conference, as to the five reasons this bill is before us, he'll list off all those horrendous cases and say that's the reason for this legislation, that Canadians don't support these murderers. He'll come up with pedophiles and a whole litany of things as to why it is this legislation is absolutely critical. He'll label permanent residents as foreign criminals. Many take offence, including myself, to that fact in itself. The reality is that he is referring to a very small percentage of permanent residents and he's highlighting those in order to justify a flawed bill.

I want to go back to the example because I think it's worth looking at this. As members of Parliament we have constituents. I'll use the example of young adults who are graduating from high school. They decide to go down to the United States. Winnipeg is only an hour's drive from the United States. A 19-year-old person uses false documents because the drinking age there is 20 or 21. If that person is not a permanent resident of Canada—and we're not talking about a few; we're talking hundreds or thousands across Canada—that person could be in big trouble.

I'll refer to the example used. Using a false or fraudulent document is an offence under section 368 of the Criminal Code carrying a maximum potential penalty of 10 years. A 20-year-old permanent resident who is convicted of using fake identification to get into a bar while visiting the United States is inadmissible under IRPA for foreign conviction. It doesn't matter that the U.S. court punished him only with a $200 fine. IRPA section 36(1)(b) does not require any particular sentence, only a foreign conviction.

Imagine the profound impact this could have on a number of permanent residents. In the example I used, this could have been a student who came to Canada when they were two years old and went through the whole system in high school. The student's mom and dad, for whatever reason, didn't get their citizenship, and this individual now, without the right to appeal, could be deported back to a country that he or she would be nowhere near familiar with, and may not even speak the language.

This is the profound impact this bill, if it passes, will have in a very real and tangible way.

The minister can use the types of examples that he has chosen, but I would suggest that the types of examples I could come up with would be far greater in number. I'm wondering whether we are making a grave mistake.

There is a suggestion I would make at this stage, at the very least. Would you not agree that people who are brought to Canada as young children, whether they be 10 or 15, but let's define an age, should be exempt from this legislation, given that at an early age it's society, it's our community that in essence rears those children?

● (1710)

Mr. Lorne Waldman: I want to make one brief point with regard to your example. It's not even necessary that there be a conviction because the legislation, as drafted, encompasses subparagraphs 36(1)(b) and (c). It's also possible for a person in Canada to be ordered deported if the immigration authorities were told that he had used the false ID in the United States. He would have committed an offence in the United States, punishable by 10 or more years in Canada, and as a result would be ordered deported and would have no right to appeal. You don't even need a conviction. In terms of your comment, obviously any measures that would soften the impact of this legislation would be important.

You should know that in the history of immigration, there was something called domicile that existed up until 1978. If you had been in Canada for more than five years as a permanent resident, you could only be deported for treason and sedition. That was removed. Instead, permanent residents were given a right of appeal that was available to everyone. Over the course of the last 30-some years, that right of appeal has been restricted and restricted, and restricted even more.

The idea that people who have been in Canada from a certain age should be exempt from deportation is one I support. I think it's one that should be considered as an alternative.

The Chair: Thank you, Mr. Waldman.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chair, and thank you to our witnesses for appearing before us today.

I found your testimony to be very interesting as I did the testimony of the previous witnesses, but I didn't have a chance to question them.

There seems to be one common theme coming out of the testimony and responses that we have heard from you and previous witnesses, which is that clearly, no one wants foreign criminals walking our streets. I think it was Ms. Seligman, a previous witness, who said that she's a mother too and she doesn't want a criminal in her neighbourhood. People don't want those folks in their area and around their children.

I was a little taken aback with my colleague, Ms. Sims, when she referred to using Clinton Gayle as an excuse. I believe the family of Todd Baylis would take some exception to that as well. Todd Baylis was a police officer, 24 years of age, who was gunned down in his prime by a serial criminal named Clinton Gayle, while he was trying to disrupt a crack cocaine drug deal. Gayle was still in Canada because he had appealed to the IAD. Let's focus a little on the victim's side of the equation. We're talking about a known criminal, not a two-year-old who's here at 30.

By the way, Mr. Lamoureux commented that the minister is labelling permanent residents as foreigners. Clearly, there is a difference between a permanent resident and a Canadian citizen. If you have lived here the better part of your life, and you're not a Canadian citizen, you're still a citizen of another nation. That makes you a foreigner by definition.

Let's just focus on criminals like Clinton Gayle. Do you agree with the ability of criminals like him to be able to appeal their deportation even though they have been convicted of serious crimes several times over?

I'll start with you, Mr. Collacott.

● (1715)

Mr. Martin Collacott: I like your description. The Clinton Gayle case that is being raised is called an excuse. It's not. These are real serious concrete problems. Mahmoud Mohammad Issa Mohammad is the poster boy, as someone described him, for refugee claimants. In his case, a convicted terrorist, it illustrates the fact that our system is highly dysfunctional.

I think there is solid public support for tightening it up. It might at some point take some fine-tuning, but I think virtually all the changes that have been recommended and all the features of this bill are quite clear, and some of them are rather broad. I think they're solidly justified in terms of what they're reacting to. They weren't just dreamed up to be nasty and tough. I think they are in response to some very concrete issues. Clinton Gayle and Mahmoud Mohammad Issa Mohammad maybe archetype problem cases, but they do reflect some real concrete issues and they have to be dealt with.

Mr. Costas Menegakis: Thank you. I would like to give Mr. Grant and Mr. Waldman an opportunity to comment.

Mr. Angus Grant: Obviously, the Clinton Gayle case is an extreme example.

Mr. Costas Menegakis: These are the cases I'm asking about.

Mr. Angus Grant: And I'm answering the question.

You would be right to respond to some other examples that have been brought up today as being examples of outliers in the other direction of extremely innocent appearing acts for which punishments of over six months can be provided. The problem in these matters is that context is everything. The outliers are the outliers because they are unusual. Most cases involving criminality are far more complex than these, as Mr. Collacott says, archetypal examples on either end of the polarity.

How do you deal with inherently more complicated situations? My submission would be that you don't do so by shutting out any conversation, any dialogue whatsoever.

Mr. Costas Menegakis: I understand that, but it wasn't my question.

Mr. Angus Grant: That's my answer to the question.

Mr. Costas Menegakis: Yes, but that was not my question.

My question was do you agree with the ability of criminals like Clinton Gayle to have an opportunity to appeal and tie themselves up in the system?

Mr. Lorne Waldman: The answer to that is Mr. Gayle under the current law, which denies people the right to an appeal with a two-year sentence, wouldn't have had an appeal anyway, if I'm not mistaken, because before he murdered Todd Baylis he had been convicted of other serious offences and received serious jail time. What happened, and I remember well the circumstances, is there was frustration because there were many people under deportation orders who weren't being deported. That was the failure of the CBSA because prior to Todd Baylis— it wasn't CBSA then, it was CIC— they weren't enforcing deportation orders.

Mr. Costas Menegakis: Thank you.

The Canadian Association of Chiefs of Police and the Canadian Police Association have come out strongly in favour of Bill C-43, saying that in their opinion, it will make Canadians, including the vast majority of immigrants in Canada, who are honest and law-abiding citizens, much safer.

Do you agree or disagree with the views of these police organizations?

Mr. Lorne Waldman: Is that for me?

Mr. Costas Menegakis: All three of you.

Mr. Lorne Waldman: I agree. That's why I agreed with them when they opposed the dismantling of the long rifle registry as well, which of course the government ignored. I agree, generally speaking —

Mr. Costas Menegakis: Do you agree with Bill C-43? I know you want to get a shot in on the long gun registry. That's already been passed.

Mr. Lorne Waldman: I couldn't resist, sorry.

Mr. Costas Menegakis: I know you couldn't.

Mr. Collacott, could you weigh in on that?

Mr. Martin Collacott: I think it definitely would.

The issue was raised earlier by Ms. Sitsabaiesan about resources. I happen to be rather sympathetic to some aspects. Mr. Waldman raised this as well. I don't think we're properly resourced. For instance, we don't interview most immigrants applying to come here. If we had, we could have advised some of the people who've been convicted of honour killings to not come here if they think their daughters aren't going to be influenced by Canadian society. I think we need more resources. I have to agree with you on that.

I think the issues would still be there. The problems might be reduced somewhat with more resources, but I don't think you would deal with cases like Mahmoud Mohammad Issa Mohammad unless you change the system. That's why I think the police would like to see it changed.

● (1720)

The Chair: Thank you very much, sir.

Ms. Freeman.

Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP): Thank you, Chair.

During the study of this bill, many of the cases that have been cited are cases that went through appeal and ended up taking decades due to systemic issues or, as you were saying, Mr. Grant and Mr. Waldman, problems with the way things are being enforced, personnel, etc. What are we concretely doing with this bill? What are we ameliorating in the system with this bill?

Mr. Angus Grant: On the security issue, my response to that would be that we are ameliorating nothing except for the fact that we are eliminating the possibility of those who have been innocently found inadmissible under section 34 from having any avenue of recourse.

On that note, the one thing the bill really could have done and which would have been appreciated I think by all parties involved would have been to do something about the frankly scandalous delays that are associated with making decisions on ministerial relief. I understand the Minister of Public Safety is not going to appear before you in respect of Bill C-43. I wish that he were appearing, because frankly, he and all of the ministers who have preceded him, to be fair, have a very difficult question to answer, which is why they just plain don't make decisions on ministerial relief waivers. This is a profound problem and this is the single source of delays really in the process.

Mr. Waldman was talking about some cases that he's had where there have been speedy resolutions. I, too, have had cases where everything up to the point where it gets to the minister to decide has taken place within a year or a year and a half, or at most two years, and then it sits. It doesn't sit for a year or two; it sits for a decade. This, to reiterate, is a scandalous reality.

Mr. Lorne Waldman: To follow up on that, what we consistently see is that the lack of resourcing is a huge problem. In fact, this bill will put stresses on the parts of the system that don't have the resources and that now are understaffed. As Mr. Matas said, because there's not going to be any appeal, officers are going to have to review the circumstances at the very beginning. They are going to have to make detailed reports. They are going to have to send these reports to senior officers for review. This is a process that is hopelessly bottlenecked and backlogged. There have been cuts to CBSA.

I would think what we are going to see is not a speedier resolution of these cases, but more delays.

Ms. Mylène Freeman: That's certainly counter to what the intention of the bill was. When you were talking about the ministerial decisions based on section 34, you said it was decades. Does that responsibility lie with the minister? Is it a problem of legislation? Is it a problem of resources? Could you be specific about how we would solve that problem?

Mr. Angus Grant: This is why I wish he were appearing before you. He is probably the only one who can answer that question.

My sense is that ministers of public safety don't like making decisions on questions of admissibility for those who are accused of security-related actions because they just don't like making these decisions. They are inherently awkward for them to make. This is why when I appeared before you last month one of the things I proposed, in your consideration of the general immigration security regime, was contemplating a way of making these decisions that would be more efficient. Part of that would be to take the decisions out of the hands of the minister. I think the minister would probably welcome that, but that's not really within the framework of what we're talking about today.

The short answer to your question is that it lies solely in the purview of the minister to make those decisions as quickly or as slowly as he wishes.

[*Translation*]

Ms. Mylène Freeman: To conclude, when you last appeared here, you made three general recommendations with respect to discretionary decisions in the context of clause 34. You mentioned that organizations or specific situations are no longer covered, that more training should be given to people assessing these files on the real risk of such individuals, and lastly—and this is the most important—that this decision should not be made by the minister.

Do you make these same recommendations with respect to Bill C-43?

● (1725)

[*English*]

The Chair: While you are thinking about it, I regret—

Mr. Lorne Waldman: The answer is yes.

The Chair: Mr. Waldman, I regret the time has expired.

Mr. Leung.

Mr. Chungsen Leung (Willowdale, CPC): Thank you, Chair. Thank you to the witnesses for appearing.

I heard arguments that there are criminal rights and so on. Canadians by and large probably enjoy peace, order, and good governance. If I were an immigrant in this country or even as a permanent resident, I don't think that right is there. It's a privilege to be here. I should understand the law, and I should abide by it. I don't quite buy the argument that someone went down to the United States to go drinking. That's a flagrant disrespect of the law of a state, as is to show false identification. It astounds me that someone could flout the law that way.

I want to address a different side of this debate today. It has to do with victims. You probably have more opportunity to meet with victims organizations, or victims of crime perpetrated by criminals or perpetrated by immigrants who are permanent residents. Perhaps you could share with us what their thoughts are. Do they think that this is a good piece of legislation?

Martin.

Mr. Martin Collacott: I think that's a solid point. This afternoon, you have me and you have these two gentlemen, and you had the three people on the previous panel who were all concerned about rights of people who have committed some kind of serious crime, war criminals and so on. The pendulum has now started to swing back the other way. Canadians, and particularly immigrants, are very conscious of the fact that we have simply given too much priority to one side of the argument.

The kind of legislation being proposed today is to deal with very concrete problems of particularly massive abuse of the system and the refugee system. The changes may involve some shifting of resources from one area to another area. As I was saying a minute ago, I think we are probably under-resourced in certain areas as it is. That has to be corrected.

I think what is happening in this bill makes sense. It is not surprising considering how far we have erred in the other direction. Now it has to be brought back. I am glad to see that this government is trying to do something about it.

Mr. Chungsen Leung: Mr. Waldman.

Mr. Lorne Waldman: I think it is important that we take into account the victims. It's also important that we take into account the spouses, the children, the parents of the permanent residents who are being deported. We have to take into account all of those people. I agree that we should consider the impact on the victims. Indeed, at the immigration appeal division, when appeals are heard, if people are ordered deported, the impact on the victims is often a highly relevant factor that will be taken into account. If the minister wants to, he can call the victim to give evidence. I've been involved in cases where that has happened. The victim's rights are important, but so are the rights of the children, the parents, the spouse, and other family members of the person who is being deported. That's why it's important that we have someone take into account all of these things.

To be honest, everyone agrees with the notion that people who have committed crimes and who are to be deported should be deported quickly, but there are other ways we could have solved this problem that would have allowed for an equitable review. This bill is going to create, over the long term, a whole series of cases and issues and administrative problems. I'm sure it will be revisited at some point in the future.

Mr. Chungsen Leung: Thank you, Mr. Waldman.

Mr. Chair, I'd like to give my remaining time to Rick Dykstra.

Mr. Rick Dykstra: I'm trying to get clarity here. There has been a discussion around the part of the legislation that would change the minister's ability to have a say, and Angus, you related it to specifically clarifying. I wasn't sure if you were referring to clause 16 or clause 18 when you were talking about the—

● (1730)

Mr. Angus Grant: Do you mean what will be proposed section 42?

Mr. Rick Dykstra: Yes, exactly. It's actually the reverse. It complicates matters a little, because I know a number of you have spoken about the issue around the minister having the ability to make a negative decision. Proposed section 42 also gives the authority for the minister to make a positive decision. In other words, the individual can appeal directly to the minister and the Minister of Public Safety can disregard the inadmissibility decision and allow the individual into the country.

I've heard you speak against the negative discretion, but I haven't heard you speak against or in favour of the positive discretion that the Minister of Public Safety would actually have under the legislation.

Mr. Angus Grant: My apologies if I wasn't clear. I did recognize that part of the provision, except for a slight change of wording, is essentially unchanged from the current exemption under subsection 34(2). I acknowledge there still is the possibility for applying for relief, and I don't think I said that that is categorically barred. What I said is categorically barred is the access to humanitarian and compassionate relief.

What I was talking about is the addition after that provision you were talking about of this, as I described it, bizarre restriction, apparently, on a minister as to what he or she can consider.

I don't know if that clarifies what you were asking about.

Mr. Rick Dykstra: I'll repeat my question. I understand your concern around that. Your comment was that we need a better clarification on this specific provision, and I was hoping to get that, but apparently I'm not going to be able to get that.

The Chair: I'm afraid you're not.

Mr. Rick Dykstra: That is why this kind of system of questions and answers is unfortunate, because you don't actually get to discuss the changes that you think are necessary.

The Chair: Mr. Dykstra, Mr. Waldman, I'm sorry—

Ms. Rathika Sitsabaiesan: On a point of order, Mr. Chair.

The Chair: —but I have to watch the clock. That's probably one of my only jobs up here. I want to thank the three of you for coming and contributing to the debate.

Ms. Sitsabaiesan, on a point of order.

Ms. Rathika Sitsabaiesan: I was wondering, Mr. Chair, if you could request from our witnesses, before you send them away, that as people have been requesting more details, maybe our witnesses could provide them in writing to the clerk. Then the committee could have those for further review as well.

Mr. Angus Grant: I'd be happy to do that, if it's agreeable to the chair.

The Chair: Okay, you can do that, sir. Thank you, Mr. Grant.

This meeting is adjourned.

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