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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)): We'll call the meeting to order.

This is the Standing Committee on Citizenship and Immigration, meeting number 58, on Wednesday, November 7, 2012. This meeting is televised. Pursuant to the order of reference of Tuesday, October 16, 2012, we will discuss Bill C-43, An Act to amend the Immigration and Refugee Protection Act.

Ladies and gentlemen, as you know, the bells will ring at 5:15. We have some business the committee will have to look at for five minutes, so this meeting will end at 5:10, which means the first group will have a total of 55 minutes. The second panel has just one witness who will have 45 minutes. That's how it's going to work. This first hour will end at 4:25.

We have two witnesses with us this afternoon, two lawyers with the Canadian Bar Association. We have Kerri Froc, who is a staff lawyer with law reform and equality; and we have Michael A. Greene, who is a member of the national immigration law section. Good afternoon to the two of you. Thank you for coming.

Mr. Lamoureux, we have all the way from Winnipeg, Manitoba a witness who is an immigration lawyer, Reynaldo Reis Visarra Jr. Pagtakhan.

Mr. Pagtakhan, I'll let you go first. You have up to 10 minutes to make a presentation.

Mr. Reynaldo Reis Visarra Jr. Pagtakhan (Immigration Lawyer, As an Individual): Thank you, Mr. Chair.

I would like to thank the committee for inviting me to appear. The last time I recall attending a House of Commons committee meeting was when my father served as a member of Parliament. It is humbling to contribute to the work you do in service to our country.

In my view, while not perfect, there are portions of Bill C-43 that deserve support, portions that should be amended to reflect greater fairness, portions that should be eliminated, and portions that members of Parliament should turn their minds to for their study.

The portion of the bill that deserves support is the provision that eliminates the right of permanent residents to appeal removals to the immigration appeal division for sentences of six months or more in prison. While some argue that this would unfairly penalize long-term permanent residents who may be deported for their actions, what is missed in this argument is that the permanent residents who face deportation are criminals. It should be stated that these individuals are not alleged criminals; they are not accused; they are not innocent. They have been convicted of a crime in a court of law.

Members of Parliament should keep in mind that to be found guilty of a crime, an individual not only has to commit a criminal act but also must have knowledge of what he or she is doing. Unless this combination of factors is found, there is no crime. Members of Parliament should also keep in mind that criminals could avoid deportation by simply being law-abiding. The Criminal Code of Canada is designed to codify what we Canadians view as criminal behaviour. These individuals have chosen the path of criminal behaviour.

In addition, these criminals were given due process as required by our court system. Members of Parliament should keep in mind that these criminals were initially presumed innocent. They were given the rights under the charter to defend themselves in a court of law and were found guilty by a jury or a judge. They lost their appeals, if they wished to file appeals.

Furthermore, we are not talking about criminals who have received only alternative sentences, fines, or probation. We are talking about criminals who have not only been sentenced to jail, but have been sentenced to at least six months in jail.

Nor are we talking about criminals who did not have the ability to argue their immigration status at the time of sentencing. There are numerous court decisions, including decisions from the courts of appeal in Ontario, B.C., Manitoba, Alberta, the Northwest Territories, and Nova Scotia, that mention immigration consequences as a relevant factor in sentencing.

For these reasons, to say that convicted criminals have not had their day in court is inaccurate.

As members of Parliament know, before a criminal is sentenced, judges must take into account certain principles. These principles are set out in section 718 of the Criminal Code. Under the Criminal Code, judges must take into account the possibility of rehabilitation and mitigating circumstances.

In fact, the Criminal Code specifically states that “an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate”. It also states that “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders”.

Permanent residents who commit crimes, like Canadian citizens who commit crimes, know the crimes they are committing.

One portion of the bill that requires amendment, though, is the five-year bar that will be imposed on a foreign national for misrepresentation. Unlike with the criminal provisions, the misrepresentation bar can penalize the innocent. Under the law, the general rule is that an immigration misrepresentation can occur without an applicant's knowledge. In fact, misrepresentations have been found when the applicant is the victim of shady representatives who have acted without the applicant's knowledge. In these cases, Bill C-43 would penalize the innocent.

A simple amendment to Bill C-43 that would result in the bar of misrepresentation applying only to misrepresentations made knowingly would be fairer and more consistent with Canadian values.

The portion of Bill C-43 that should be removed is the section that would allow the minister to deny entry to temporary residents on the basis of public policy. This section is troubling in that the ministerial discretion opens up the possibility of decisions being made without clearer criteria. Canadians are entitled to know what actions could cause a person to be barred from coming to Canada.

● (1535)

In the departmental backgrounder that was published in June, the department cited the example where the minister could bar from entering Canada a foreign national who would promote violence against a religious group. If promoting violence is criminal, these individuals, when they enter Canada, should be arrested and should be charged. However, the decision on arrest should not be made by a political actor but by the professionals in the judicial system such as police and crown attorneys.

If the conduct of a foreign national is criminal, he or she should be arrested in Canada. If not, he or she should not be prevented from entering Canada.

The last aspect I would like to touch on are the parts of Bill C-43 that deal with employer compliance. I realize that clause 37 deals only with the ability to create regulations with respect to foreign workers and their employers, among others. I also realize that before these regulations are enacted, Canadians will have the ability to comment on these proposed regulations.

However, members of Parliament should be giving thought as to what sorts of conditions should be imposed on employers of foreign workers and the penalties for non-compliance. Over 180,000 foreign workers are in the country at any point in time. This is a large component of the workforce, and certainty is needed for both employers and employees. As a result, before enacting such regulations, widespread consultation with business, labour, and other groups will be necessary.

Thank you, Mr. Chair. I am open to questions from members.

● (1540)

The Chair: Thank you, Mr. Pagtakhan.

Ms. Froc and Mr. Greene, you have, between you, 10 minutes to make a presentation.

Ms. Kerri Froc (Staff Lawyer, Law Reform and Equality, Canadian Bar Association): Thank you, Mr. Chair and honourable members.

The Canadian Bar Association is pleased to appear before this committee today to address Bill C-43.

The Canadian Bar Association is a voluntary association of 37,000 lawyers across Canada whose primary objectives include improvement in the law and the administration of justice.

It is in the spirit of this mandate that the members of our immigration law section have analyzed Bill C-43 and made the comments that we have submitted to you in writing and will speak about today.

Michael Greene, a member and past chair of the immigration law section, is with me today, and I'll turn things over to him to address the substance of our comments on the bill.

Mr. Michael Greene (Member, National Immigration Law Section, Canadian Bar Association): Thank you to the committee for inviting us to address you today.

I'm Michael Greene. I practise immigration law in Calgary. I teach immigration law at the faculty of law at the University of Calgary. I was the national chair at the time of the introduction of IRPA. I appeared before this committee on very similar provisions, in fact, on the two year bar. That was part of the presentation we made at that time. You might guess we weren't in favour.

In any event, we recognize that in order to maintain public support for a robust immigration program, Canadians must feel confident that we are tough on those who would abuse our immigration system. The minister has been effective in this regard and we applaud his efforts particularly in going after citizenship fraud, permanent residence fraud, marriage fraud, and the activities of crooked consultants.

Unfortunately, we cannot support this legislation. In our opinion, Bill C-43 is an unnecessary exercise and comes at an unacceptable cost to basic Canadian values of justice, fairness, and compassion. While we believe it is a good thing to limit most forms of temporary inadmissibility to just the individual involved rather than their family members, our endorsements or positive comments essentially stop there.

Unlike most other immigration reforms proposed by this government, this bill was not the result of public consultations and was not subject to public consultations. In our opinion, this is a recipe for bad law.

We know that you're under considerable pressure to pass this bill through committee quickly. We urge you to take your time and consider the bill carefully. The problems in this bill, we believe, are substantial enough to warrant careful deliberation and debate.

We already have sufficient and effective tools to keep out foreign nationals with criminal backgrounds and to expeditiously evict those who commit serious crimes after their arrival. Much like the problem with citizenship fraud, the problem lies not with the law or the tools available to the department but rather in the setting of priorities and the allocation of resources to deal with those problems. The extensive delay cited by the minister in certain high profile cases have much more to do with restricted budgets and resources of the CBSA than with deficiencies in the process.

The recent elimination of 1,700 positions at the CBSA is likely to contribute rather than improve those delays. Examples of cases that have been given to show excessive delays in removal of permanent residents who commit offences are not representative of the vast majority of cases. While this legislation may be designed to capture the most egregious cases involving serious and unrepentant offenders, whose continued presence offends many Canadians, they will also capture much less serious offenders.

This legislation would break families apart and negatively affect the best interests of the children involved. Fairness and due process are not loopholes. They are fundamental cornerstones of Canada's system of justice.

The minister in his appearance said that he believes everyone should have their day in court, just not endless years of days in court. However, these are not multiple appeals against removal or denial of admission under the family class. There's only one single appeal. As long as the department and the decision-maker follow due process, their decisions cannot be reviewed. It is very rare for an IAD decision to be successfully challenged in court.

Moreover, once the IAD has rendered its decision, there is no right for the person to stay in Canada. They cease to be a permanent resident. If they challenge in court, they do not get to stay here. If the CBSA let's them stay, that's a different choice, but they do not get to stay while protracted appeals go on. It's only if the court issues their own stay that they would be allowed to stay. That would only be in meritorious cases.

I would like to highlight a few elements of our submission. First, I'll talk about the elimination of appeal rights for permanent residents with six-month sentences for crimes committed in Canada. We do not agree with Mr. Pagtakhan. The immigration appeal division, with respect, is not the problem. The tribunal review takes into account both concern for the safety of Canadians as well as concern for the immigrant and their families, their employers, their co-workers, and their communities.

Offenders who show a risk to reoffend do not succeed at these hearings. Those who are successful are almost always subject to terms and conditions that require good behaviour and rehabilitation. The failure to comply will result in their removal. The IAD's ability to impose terms and conditions on a stay order is an incredibly effective enforcement and rehabilitation tool that we've seen many times. The success of the IAD is often seen in the successful rehabilitation of one-time offenders as a result of this process.

● (1545)

The inclusion of conditional sentences in the calculation will target relatively minor offenders who have never spent a day in prison.

To be clear, the bar that has been set in this bill is not six months of incarceration; it's just a six-month punishment. That catches conditional sentences, which are normally considered by the courts to be very minor sentences; somebody is basically given house arrest. At the very least, we think that an amendment should be introduced to make it clear that it covers incarceration only.

The denial of access to IAD review to permanent residents whose inadmissibility is based solely on foreign convictions or offences would treat foreign convictions much more seriously than Canadian convictions, because there would be no regard for the sentence imposed, or even to whether there was a conviction. Foreign convictions and offences often involve processes that lack the procedural fairness that exists in Canada. In the way this is written, there is no consideration of the sentence received; it's simply how the offence might have been prosecuted in Canada.

For instance, using a false or fraudulent document is an offence under section 368 of the Criminal Code of Canada; it carries a maximum potential penalty of 10 years.

A 20-year-old permanent resident residing, let's say, in Windsor, borrows somebody else's birth certificate and goes across to Detroit and sneaks into a bar. That is presenting a false document, and that person has committed an offence. They could be caught, convicted, and given a minor fine and thereby become inadmissible without any right of appeal.

That's the way this section is drafted. We don't see any justification for including this here, for denying admission in this case.

It gets worse. The bill would deny a right to appeal when a person is merely believed to have committed an offence, even without the person's having gone through a judicial process and been convicted. They might never have been charged; it's purely the conclusion of an officer.

Neither of those powers was in the legislation before, just to be clear; they have been added. Foreign convictions and offences were not in the previous legislation, that is, as being automatic grounds.

I want to comment on the proposed ministerial power to exclude foreign nationals on public policy grounds. On this one I would agree with Mr. Pagtakhan. We believe this power is unlimited, unaccountable, un-Canadian, and unnecessary. It doesn't have a place in a free and democratic society that cherishes civil liberties and fundamental freedoms.

It's wrong to say that the minister is currently powerless. We have nine different inadmissibilities to Canada. We also have hate crime laws and anti-terrorism laws that specifically target people who promote violence against vulnerable groups in society. People with track records or an intention to engage in hateful rhetoric in Canada are inadmissible under existing immigration laws.

I also want to comment on increasing the inadmissibility from two years to five years. As Mr. Pagtakhan pointed out, one of the problems is unintentional misrepresentations, which the courts, up to the Federal Court of Appeal, have clarified. You can make a misrepresentation, let's say, about a child you didn't know existed. If you fill out your application and don't include a child, and you find out after the fact that you did have an illegitimate child, that can cause you to be inadmissible. This shouldn't be punished by five years' inadmissibility.

There are many other examples that are minor, somebody who embellishes a relationship history, for instance, but who is in a legitimate relationship.

Lastly, there are the restrictions on humanitarian and compassionate relief for certain inadmissibilities, including organized criminality. Again they're facially appealing but may work injustice in many cases.

Much of the problem with many of these laws is that they are designed for the really egregious cases that we can all agree are really offensive and in which people want those people out fast or want to keep them out. The problem is that they catch so many others.

People can commit organized crime just by acting in concert with somebody else in something such as a property offence like shoplifting. That can be considered, and the CBSA has gone after those people for, organized crime. It's not often that they do it, but I've seen it happen in property offences. These are not members of the Hells Angels. Just acting in concert with somebody else can be called organized criminality.

● (1550)

The Chair: Perhaps you could conclude, Mr. Greene, please.

Mr. Michael Greene: With the greatest respect, we believe the bill has enough flaws and shortcomings that it should be withdrawn or should not proceed unless substantial amendments are made. We recommend it go through a more thorough consultative process so that different alternatives can be found.

Thank you.

The Chair: Thank you, Mr. Greene and Ms. Froc.

We appreciate the contribution of the three of you to this committee, and I know committee members have some questions.

We'll start with Mr. Opitz.

Mr. Ted Opitz (Etobicoke Centre, CPC): Mr. Chair, through you, I say thank you very much, witnesses, for being here today. We certainly appreciate your time, your effort, and the insight that you are going to provide for us through our questions and your answers.

I'll start with you, Mr. Greene.

In your submission, you're talking about criminality of permanent residents. When people come to Canada, should they even be considering committing crimes in this country? They're starting a new life in a new country. Why should these people be allowed to commit crimes?

Mr. Michael Greene: Well, they shouldn't and we have a criminal justice system to punish them. We also have a deportation system to get out the bad ones. I don't think we should abandon that. I think we should hold people accountable.

The problem with this kind of a broad-brush bill is that it doesn't distinguish between...there are always degrees in these cases.

I've been practising in this area for 25 years and I've done many of these kinds of cases. Typically, what we see and what the bill doesn't provide for is the long-term permanent resident. We see people who come here as children, often as infants, from different countries with different cultures. Their families have difficulty adjusting and the parents often work really hard and aren't around much. There's sometimes conflict because the parents want them to maintain their cultural values at home, but these kids are getting westernized. Sometimes they have trouble adjusting in school and they start to act out and they hang out with the wrong kids. Sometimes they drop out of school, sometimes not.

What I often see is these offences are committed when they are 18 to 21 years of age when these kids think they are invincible, like all kids do. They think they can do anything. They commit an offence and they get into the system. If they go through the IAD system and they show enough positive factors, they get terms and conditions imposed on them.

I've seen so many cases where the kids have turned their lives around. I've also seen cases where people didn't turn their lives around. At the appeal, it became painfully obvious that they hadn't turned their lives around and they got on a plane back home.

Mr. Ted Opitz: We're not always talking about just the youth. That happens; there's some of that going on and we understand that, but we're also talking about serious criminality. For example, there is one who has 60 counts of fraud, forgery, conspiracy to commit fraud, obstructing a peace officer, failure to comply with court orders. It took over five years to remove him after the removal order was given.

There are so many more including, by the way, trafficking, murder, and so many other things, as we've heard in the last number of meetings, including the murder of a police officer. You did say in your submission that we have justice, fairness, and compassion in this country and I believe we do. This is one of the greatest countries on the planet and that's why people want to come here. In fact, in the tens of millions, they want to get in.

Are you aware, by the way, that many other countries, such as the U.K., the U.S., New Zealand, and Australia, already have provisions in place to bar individuals who would harm the public interest and who are otherwise not admissible? Some of those provisions in those countries are broader and more discretionary than under Bill C-43.

Mr. Michael Greene: These are two different points. When you talk about the serious ones, I want to say that we're not saying all criminals get to stay. We're not saying that at all. We are saying there should be a process.

The most serious fellows should get expedited and they should be made a priority. If you look at citizenship fraud, we saw this go on for decades. How many people lost their citizenship for fraud? Almost nobody, until the minister said he was going after that and putting the resources there to go after 2,500 cases to get them removed. I can tell you, that is sending shock waves around the world. We're delighted at his efforts to do that and we're appalled that nobody else did it before. That was simply a resources issue.

If you look at some of these serious offenders that the public is really upset about, some of the cases that have been cited by the minister, you prioritize them and you put them in a jail. If they are a danger to offend, you can detain them. We have that power to detain them. Believe me, they want their appeals to go a little faster if they are sitting in a remand centre somewhere.

There are tools out there already. The problem is that the cases that get cited in support of this bill tend to be the most egregious ones, forgetting what the effect is on probably the vast majority that aren't that egregious.

If you look at the Baylis case as an example, where the police officer was killed, that wasn't the fault of the IAD process. What happened is that the guy went through and he lost his appeal, was ordered deported, and he disappeared. Because he disappeared, he eventually emerged with a gun in his hand and killed somebody. That is appalling.

It shouldn't take that long, if you draw distinctions between the minor and the serious cases and go after the serious ones.

Another suggestion is that you could let an officer impose the terms and conditions of the minor cases, set up something like you do now with bail where there are mandatory terms and conditions. If they breach on the minor cases, then they're gone.

I'm sorry about that. I took you on a long answer.

● (1555)

Mr. Ted Opitz: Because you know I only get seven minutes.

Mr. Michael Greene: I'll just comment on your other comment about other countries. I'm not an expert on what happens in other countries. I can only say the one time I can recall the U.S. using this power is when they kept Farley Mowat out of the U.S. I don't know what his problem was, hate crime or whatever it was, maybe loving animals too much, but Farley Mowat was denied entry into the U.S. I don't know what other countries have—

Mr. Ted Opitz: I think they would tend to aim at somebody a little more serious than that.

Mr. Michael Greene: I would hope.

Mr. Ted Opitz: We're talking about the people committing crimes here.

Have you ever spoken to victims' groups or any victims' organizations about Bill C-43 and what their views would be? You are talking about crimes that may not be as egregious, but if you defraud a senior citizen of their life savings, it may not be murder and it may not be a capital type of offence but that's pretty serious to that individual because you have harmed them, probably irreparably. Have you talked to any victims' organizations about this sort of thing?

Mr. Michael Greene: We get calls from victims, too, saying that someone has defrauded them. We see it in the case of marriage fraud. We see it in criminality, too. They say that the person doesn't deserve to be here and ask what then can do to get them out. Sometimes we direct them to the CBSA to make complaints. Sometimes we direct them to their MPs, to request them to prioritize the case, to put some pressure on to make this happen. It is appalling sometimes to see that action not being taken.

Mr. Ted Opitz: Sure, you've got calls, but have you actually reached out to any of these organizations?

Mr. Michael Greene: Let me think about that. I don't think the Canadian Bar Association, in fairness, has reached out to anybody on these things. We draw on the experience of all of our members is what happens.

The Chair: I'm afraid that's it.

Ms. Sims.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): I want to thank all of our witnesses for appearing before the citizenship and immigration committee. It is always a challenge in itself I've found. We do thank you for taking time out and coming to share your perspective with us. Thanks for your testimony.

We do share a number of concerns with the legislation before us, particularly the increased power that will be concentrated in the hands of the minister without any checks and balances. We also have been very clear that we're willing to work with the government to make sure non-citizens who commit serious and often violent crimes can be removed quickly. I think I heard you say that as well. There are ways that can be expedited.

We believe that if you look closely at the sensational cases put forward by my colleagues across the way and the minister, what comes to our attention is that the real problem appears to be a lack of training, coordination, resources, and border security.

In today's *Toronto Star*, there is a case of a Chinese national who was able to enter and stay in Canada despite being wanted for a grisly murder. This was not due to a lack of legislative tools to deport him; it was because of a breakdown in border security.

There is another case, which mentioned as well, that of Clinton Gayle. He brutally murdered Constable Todd Baylis. Our hearts go out to the family of Todd Baylis and to all the police in Toronto. Once again, a federal inquiry into the case revealed that serious errors led to the delay in removing this serious criminal. A former associate deputy minister even admitted 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 going to be higher. It all depends on what the goal is.

We believe the government needs to go back to the drawing board and address the lack of training, resources, and integration of information and monitoring technologies within the responsible public service agencies we currently have.

I'm going to address my first question to Michael and Kerri. In your brief to the committee, you conclude that many of the proposed amendments are both unnecessary and unjustified. With a mind to some of the sensational cases I just mentioned, could you talk about how the current system could be improved without eliminating the right to due process proposed in this bill?

● (1600)

Mr. Michael Greene: When you go into the emergency room at a hospital, there's a sign on the wall that basically says that it's not first come, first served. There's a prioritization, a triage.

I do a fair amount of appeal work in my own practice. What frustrates the heck out of me is that with the CBSA, partly because they're stretched perhaps, there is no triage. I don't see the kind of triage that I think needs to happen. All cases are treated the same. All you need to do is reorient your priorities in the CBSA hearings department, for instance, and say you're going to identify those more serious offences, maybe the ones that get more than a six-month sentence, and prioritize those for fast-tracking.

You could even take it to another level. If you wanted to treat it like you have treated refugee reforms, you could say that you will fast-track cases that meet certain criteria. The problem with it now is it doesn't draw any distinction between those egregious cases and the ones that aren't egregious.

I've got to say that we do have some concerns. The problem with basing this kind of legislation on egregious cases is that many of them are just not appropriate. The Clinton Gayle situation, for instance, is more of an enforcement problem than an appeal process. It happened under previous legislation. The minister brought up the Just Desserts case, which happened under previous legislation, where four people were charged in the offence and three of them were convicted. The three convicted were Canadian citizens and the one acquitted wasn't a Canadian citizen. It's not really a very good example of the failure of the appeal determination system.

The problem with the Khosa case which the minister referred to, which did take years to wind through the courts, is that it set a precedent for how the courts review administrative decisions in Canada. It is a fundamental case. I teach it in my law school class. It changed all the rules. It was a principle of law case. It wasn't Khosa stringing out endless appeals; in fact, he won the early level. It was the good department challenging the decisions, not the individual. That's not a good example of the failure of our system. Not that there aren't failures. We have failures in the criminal justice system. We have people who get acquitted on technicalities or because of excessive delay. We don't say we're going to cancel criminal trials and take away the right to criminal trial because some bad guys get away with it. We have to have more faith and we have to look at prioritizing.

The other suggestion I had is to look at the possibility of imposing conditions at the officer level. It would be a statutory amendment, but I think it could be done.

Ms. Jinny Jogindera Sims: Thank you.

I read through your brief quickly. You mentioned a number of suggestions for amendments to the proposed legislation. Could you expand on these? Do you think we could change this bill to both preserve due process and deport dangerous criminals faster?

Mr. Michael Greene: Well, yes and no. As we've said in our brief, and we really do invite you to read it, the problem with this is that with a lot of the other initiatives the minister has made, there were extensive consultations, so a lot of thought and discussion went into that. In this case, the backgrounder said—there was a campaign promise made—the minister asked his department to review and make recommendations. It almost sounds as though he got a wish list from within the department from some sectors saying what they would like to see. He's done that. I don't know where it came from, but I do know that we weren't involved in the process.

Sometimes mechanisms take some time to develop and to test and to toss around. That's what should be happening. I'd prefer to see that.

There are improvements. We've talked about a few very specific ones in there. You can't do conditional sentences and you shouldn't be barring people for merely committing or for foreign convictions without a right of appeal. Leave them with the right of appeal. If they're bad guys, expedite them. Get them through fast.

● (1605)

The Chair: Thank you, Mr. Greene.

Mr. Lamoureux.

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

I appreciate the presentations from all the witnesses.

I did want to pick up on a point in regard to the bill as a whole. We believe it is fundamentally flawed and in fact it should never have passed second reading. We need to go back to the drawing board. Just listening to you specifically, Mr. Greene, what you're saying with the idea of no consultations and so forth reinforces that. We are the only party that actually voted for it to not even come to the committee because we believe it is so fundamentally flawed.

I want to pick up on something you made reference to. I talked about this on Monday, and I'm going to repeat it. This is just a quote I took from another presenter, with regard to the criminal act. It states:

> Using a false or fraudulent document under Criminal Code s. 368 carries a maximum potential in penalty of ten years. A 20 year old permanent resident convicted of using fake identification to get into a bar while visiting the US is inadmissible for foreign conviction. It doesn't matter that the US court issued only a $200 fine. IRPA s. 36(1)(b) does not require a threshold sentence, only a foreign conviction.

Some would suggest to you that it doesn't even actually require that conviction.

Using this in a real-life example, someone who maybe was born in another country comes to Canada when they're two or three years old. They'd be in Canada for a number of years. When they're 19 years old, maybe they've graduated from high school, they cross the border and they use false ID in order to get served alcohol, because the age across the border is 20 or 21 in order to be served alcohol. They get caught. They're going to be deported. The rest of the family can stay, but they're going to be deported, even though they've been in Canada, for all intents and purposes, all of their natural life, having come here at age two or three.

We're not talking about the exceptional case. When the minister introduced the bill, he mentioned five reasons why the bill was before us. It was just one horrific story after another horrific story. He labelled the bill the faster removal of foreign criminals act. It's a scary message that I believe is sent to 1.5 million permanent residents who call Canada home.

Do you believe that this bill would be better off if the minister went back to the drawing board, consulted with different stakeholders, and attempted to reintroduce a much more modified piece of legislation? Would it be better to see that done as opposed to having to go through the charade of trying to come up with amendments to try to put a band-aid on the legislation itself?

Mr. Michael Greene: Yes. It's probably not a charade, but it's a difficult exercise to try to fix it. I think it's fundamentally flawed, and we have recommended that it go back to the drawing board. We're prepared to work with the government.

As we said at the outset, it's so important to keep public faith in immigration. We don't want to happen here what happened in the United States, which is where people have lost faith in the enforcement and so they won't support meaningful immigration reform.

The minister has done some incredible things with modernizing and improving the system, but he can't do them without public support. I know that's why he wants to do this kind of thing, but this is the wrong way to do it.

In fact, focusing on these extreme cases, the egregious cases, can be counterproductive, I think, because it can make people think there's a bigger problem than there really is. A lot of the cases he cited are very old and they're pre-IRPA. They're not even under this legislation. It's a bit dangerous to do that because you risk making people think we have a big problem with immigration, that we should just stop immigration.

There was a recent poll which showed there's been a shift and a greater percentage of the population is concerned about immigration levels. I'm wondering about whether the alarmism that comes in this kind of thing is contributing to that.

Mr. Kevin Lamoureux: Mr. Chair, I have a very quick question for Mr. Pagtakhan.

I appreciated your comments in regard to misrepresentation. Could you cite an example or two in terms of what you'd think of as unintentional misrepresentation?

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: Mr. Lamoureux, beyond the unintentional misrepresentation, the big problem is the misrepresentation when a consultant does it without the knowledge of the applicant. There were a number of cases that were decided in the Federal Court recently where a misrepresentation was held, where a fake English language test result was put in by a consultant. Those people were found to have made a misrepresentation. Their applications were denied. Under the new legislation, that would generate a five-year bar. That's not fair.

The difference in some of these provisions is that here is where innocent people can be penalized. There is no right of appeal for these innocent people who are being penalized. If you take out this misrepresentation bar for the innocent and you put it onto people who have knowingly put in fake documents to try to jimmy their way into this country, those are the people you should be targeting. The law of misrepresentation, as Mr. Greene has indicated, is broad and it affects people who have—

● (1610)

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

Mr. Weston.

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

This has been an extraordinary day. I thank all of our witnesses today. You have presented yourselves clearly, sincerely and with balance. It's hard to deny the credibility of a witness who on the one hand finds problems with the act, but on the other hand compliments the minister for other things that he has done. In all cases, we thank you.

I'm very proud to be on this committee and to share with my colleagues the process of opening Canada's doors to so many people from around the world. Our numbers really tell the story, 250,000 people coming, of a very generous refugee system.

It's often said that it's the immigrants themselves who are the most ardent in support of the kinds of measures the minister is proposing here.

Let me just put a very basic question to you. Is it not a reasonable thing to ask that permanent residents not commit a serious crime in order to retain their permanent resident status or to obtain citizenship?

Let me go to you, Mr. Greene, first.

Mr. Michael Greene: Of course, it's reasonable. We should expect that.

The only thing I'd say is that things aren't black and white. Our criminal justice system is a good example of that. We expect people to obey the law. If they don't obey the law, there are consequences. The consequences depend on how serious the violation is, whether it's a one-off or whether it's a pattern. The same thing should apply to immigration.

I talk to people and your average person—I come from Calgary and you can imagine I hear it all the time—thinks it should be zero tolerance, but zero tolerance doesn't really work. Human beings are far more complex than that. When you get somebody who comes as an infant and they're here for 20 years or 30 years before this kind of thing happens, it's a little harder to apply zero tolerance to them.

Mr. John Weston: Let me switch to you, Mr. Pagtakhan.

Isn't it reasonable to expect an immigrant not to commit a serious crime in order to retain his or her status, or to obtain citizenship?

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: Absolutely. We all expect people to be law-abiding and there are consequences for breaking the law.

One of the things that is sometimes lost in this discussion is that even though there may not be an immigration appeal for some of these individuals if they are convicted of a penalty of more than six months in jail or more than six months of incarceration, they have the ability to say, “Look. I could be deported. I don't have an appeal. Please take that into account when you sentence me.” The courts of appeal in Manitoba, Ontario, Nova Scotia, the Northwest Territories, and other jurisdictions have said that this is a consideration. There have been many cases, the case of Arganda in Manitoba, more recently, where the courts of appeal have actually reduced the sentence to preserve a right of appeal.

The immigrant who commits the crime, the convicted criminal, has the ability to argue at their sentence when a criminal judge, a Court of Queen's Bench judge, can take into account the victim impact statement, can take into account the issues of all the things they should be taking into account in sentencing, and also the particular circumstances of the individual. When you take into account all of those things, that is essentially what the immigration appeal does. It's not that we're taking away the rights to state what a circumstance of the individual criminal is. They can do that and the courts of appeal will recognize that.

Mr. John Weston: Something that shocked me was that there are some 850 people who, on an annual basis, are making an appeal to the IAD in order to delay their deportation. It's not just a question of individual cases, where we've put some focus in the testimony today, but the volume.

Mr. Pagtakhan, what do you think of that number? Does that surprise you? Is it a significant number in your mind?

● (1615)

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: There are lots of people who commit crimes. Eight hundred fifty might not be a significant number. I'm not too sure of what the volume is in terms of other cases. I'm not too sure that's an alarm bell in terms of the number who are appealing. I haven't seen the statistics as to what that number would be if you reduced it to the six months from the two years less a day.

Mr. John Weston: Okay, that's a good comment.

The other issue that concerns me is in terms of people who are inadmissible on very serious grounds, such as war criminals, human rights violators, and organized criminals, people who have been able to delay their deportation by applying on the humanitarian and compassionate grounds.

Can I get your comment on that, Mr. Pagtakhan? What do you think of the Bill C-43 provisions that will take away the humanitarian and compassionate grounds to delay a deportation for somebody who has committed—

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: I don't want to say that some crimes are more serious than others, but those types of crimes are really high on the level of seriousness. Taking away an appeal on humanitarian and compassionate considerations for that is a very big thing that you're taking away, but if you're going to take it away from anyone, you take it away from war criminals and terrorists, from those types of people. The nature of that crime is such that you would ask what humanitarian ground, really, you are going to assert. Here's the humanitarian ground: “I blew up a whole bunch of people, but this is a really good reason that I should stay.” I'm having trouble figuring out what the humanitarian ground would be.

Mr. John Weston: I put this to both our witnesses. As a fellow lawyer and someone who cares about due process and who has argued these humanitarian and compassionate things in other arenas before, I want to maintain confidence in our immigration system, the confidence that we are bringing in good people, so that all Canadians can support a minister who wants to continue to bring in such an enormous number of people each year, confident that we're bringing in good people who are building the country and not alarming the country.

Do you have any last comment, Mr. Greene?

Mr. Michael Greene: On the war criminal front, the thing I'd point out is that there are shades of grey. It's egregious, yes. If somebody has been blowing people up, there's no question: we don't want them and we should get them out fast, or keep them out in the first place. But—

The Chair: We have to move on. I'm sorry.

Mr. Michael Greene: Okay. I'll just say that Nelson Mandela would not have a right of appeal under this legislation, just to use an extreme example.

Mr. Rick Dykstra (St. Catharines, CPC): He wouldn't need one. He's been accepted into this country.

The Chair: Order. Ms. Sitsabaiesan has the floor.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): Thank you, Mr. Chair. Thank you as well to our witnesses today.

We agree that non-citizens who commit serious crimes in Canada should be dealt with quickly; however, we're very concerned that this Conservative bill will concentrate more arbitrary power in the hands of the minister without checks and balances.

I was reading through your brief to the committee, and I see that you feel the same way, Mr. Greene.

What are the implications of an enormous transfer of discretionary power from the judiciary to the political office of the Minister of Immigration, as proposed under this bill?

Mr. Michael Greene: By the way, these are not my personal views. I'm presenting the Canadian Bar Association's views. Quite an extensive consultation went into this among the members of the bar.

In any event, we have been concerned about this in a number of pieces of legislation. Just so you know, the process of review of the relevant factors will still happen. It happens now with people who get more than the two-year sentence. It happens by an officer.

The problem with it is that it's difficult for officers to make these decisions, because nobody wants to put their career on the line and make a bad decision; whereas an independent judicial...that's their job. Somebody who is a board member has to weigh the factors. For an officer, it would be a career limiting move to let somebody stay and then have that person reoffend.

We think it's a bad idea to transfer those powers. That's why they created the immigration appeal board in the first place in the 1970s, to take that discretion away from officers and create a more effective system.

Most people working in the system think it is effective. I think the real problem people are concerned about is delays because of volume. I don't know whether 850 a year is a huge volume, but it causes the system to back up, especially if it's not resourced.

Ms. Rathika Sitsabaiesan: Thank you.

The minister has underlined half a dozen cases of extreme, repeat, non-citizen criminals who have gone on to reputedly commit serious crimes during the delay of their deportation. A couple of these cases have already been mentioned today.

Clearly many of the sensational cases show serious problems with border security. We need to stop criminals and terrorists before they arrive in Canada; however, the Conservatives' cuts to border services will mean that Canadian officials will have to try to do their best, of course, but with less now.

I'm going to ask you a few questions and then give you the rest of my time to answer them.

Is removing the right to an appeal the only way to prevent these cases? Do you have any suggestions on how the Canada Border Services Agency might be better equipped to prevent serious criminals from entering Canada in the first place? How do the cuts to CBSA impede these efforts?

The rest of my time is yours.

● (1620)

Mr. Michael Greene: I don't think we have a problem with preventing serious criminals from coming here. None of the examples, at least of those I've seen that the minister has given, involves somebody who got in who shouldn't have gotten in. They're all of people who have committed offences after they got here.

I think the tools are already there. Also, they're improving the use of biometrics. It's going to be much harder for a person—somebody who has been deported, let's say—to adopt a false name or false ID and come back, because the minister is bringing in some other proposals to make this more effective.

I've already commented about this enough. I have made the point that you can do triage. You can have the officers impose conditions on the less serious offences, so that you save the more serious ones to go to full hearings.

The Chair: You have one minute.

Ms. Rathika Sitsabaiesan: I'm going to follow up in a similar vein. We've heard from Auditor General reports time and time again about the lack of resources, not having adequate training for the CBSA and not having adequate integration of CBSA and CIC staff.

Do you think we should be investing more time in ensuring that our existing legislation is adequate to achieve the goals of this legislation? Should we be investing in making sure that our existing legislation is actually being enforced, rather than just writing new legislation?

Mr. Michael Greene: I'm going to leave some of that to the political realm, but I'll say that I don't think changing the legislation is going to solve the problem. There is still going to be a problem. With somebody who is ordered deported and doesn't have a right of appeal, we will still go through the same process of gathering information and presenting it. We just do it in writing. Then it goes off to an officer in downtown Calgary, in my case, and then to downtown Ottawa, and the process takes many months. I've seen those things stretch out for years, inexplicably. But I know what it is. They're just stretched a little thin in resources. I say it's priorities.

The Chair: Thank you.

Contrary to what I said, I understand the bells are now going to ring at 5:45, so this session will end at 4:30.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chair, and my thanks to our witnesses for appearing before us today. I am finding your testimony to be very interesting.

I have a couple of statistics. Last year 43 million people visited Canada's immigration website. A record 265,000 people were accepted as immigrants into the country. This is a record number since the second world war, something that is going to be repeated again this year. Surely, law-abiding people should have the priority of coming here over those who would break our laws and commit crimes.

Ms. Sims referred to the Clinton Gayle case as a sensational case. I would agree with her. It is very sensational. Todd Baylis, at 24 years of age, was gunned down. He was murdered by a serial killer, a drug dealer. While on his duties as a police officer, he was trying to disrupt a crack cocaine drug deal. Clinton Gayle was still in Canada because he had appealed to the immigration appeal division, IAD.

Mr. Pagtakhan, do you agree that criminals like Clinton Gayle, serial criminals convicted of serious crimes like drug dealing, should have the right to an appeal?

● (1625)

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: No, they have the right to discuss these issues at sentencing. This was a case in Ontario. The Court of Appeal of Ontario has said that. If he could convince the Court of Appeal to give him a sentence under the amount that would allow him to appeal at the immigration appeal division, then so be it. Let the sentencing judge make the decision. The sentencing judge is hearing the evidence of the actual crime, the evidence of the police officers, the witnesses, the victims. At sentencing the judge can hear the argument of counsel for the defence. This is where the protection lies for the accused, who, by the time he is going to be sentenced, is now the convicted.

That is where the protection lies, and there is no necessity for an additional appeal. The protection is already there, as set out, in this case, by the Ontario Court of Appeal.

Mr. Costas Menegakis: Over the last few days that we've been debating this legislation and doing this study on Bill C-43, I've heard several witnesses refer to the issue of permanent residence. Some people may come here at two years of age and decide they're going to enter criminal life at age 30. Some wonder whether they should be treated as a foreign criminal or as a local, even as a Canadian citizen.

In my opinion, there's a difference between a permanent resident and a Canadian citizen. If you're old enough to commit those crimes, you should know some of the benefits of Canadian citizenship. You've had plenty of opportunity in your lifetime to attain that.

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

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

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: On the issue of taking away the right of appeal for people who have been convicted of a crime of six months or more, I'll answer yes. You've heard my testimony on some of the other issues with which I have concerns.

I agree, Mr. Menegakis, with your assessment. These individuals have made a decision to commit a crime. You have to have what we lawyers call *actus reus* and *mens rea* to commit a crime. These people have made that decision. They are criminals. They are not the accused. They are not presumed innocent anymore. When you make that decision, you have to face the consequences.

Mr. Costas Menegakis: Thank you very much.

The Chair: Thank you, Mr. Menegakis.

Mr. Leung, you are the final speaker.

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

Thank you to the witnesses for appearing.

Let me say that in my life, I've lived in Taiwan, Japan, and Canada. When I came to Canada as an international student, it was quite clear to me that I valued the systems of law and order and good governance here. The fear of not completing my studies if I ran afoul of the law was a heavy burden to hang over me, as was just being a good citizen in this country. I find it difficult to fathom how as lawyers evaluating the legal system and as legislators, we allow this type of discussion to go on when it indicates that we are allowing people to come here who have disrespect for our legal system or disrespect for our law.

Mr. Pagtakhan, I wish to hear from you whether it is too much to ask of people who come to this country to respect and obey our laws. If not, why do we get ourselves wrapped up in this type of discussion? Perhaps you can address that and give us your thoughts on that.

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: I don't know why we necessarily get wrapped up in these discussions, although these are important discussions and the committee will have important things to say, as do citizens and my colleague, Mr. Greene, of the Canadian Bar Association.

In answer to your first question, it is not too much to expect an individual who immigrates to Canada to respect the law. Frankly, it is not too much to expect Canadian-born individuals, such as me, to respect the law. We expect people to respect the law, and that is why we have a criminal justice system. People who break the law face consequences. Individuals who have chosen not to get Canadian citizenship or have not been here long enough to obtain Canadian citizenship will have other consequences befall them.

Every individual, as every lawyer knows and every judge knows, is presumed to know the law. If you are presumed to know the law, then you'd better be on the right side of it or otherwise face the consequences.

● (1630)

Mr. Chungsen Leung: That also includes people who came here at a young age. Therefore, ignorance of the law is not necessarily an excuse for someone to say that they have a right to stay here because they grew up here all their life and therefore they have no attachment to their country of origin.

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: Mr. Leung, on the issue of people who came here when they younger, clearly there's a bit more sympathy for those individuals. We're not talking about anyone who's been convicted of a crime. We are talking about an individual who's been convicted of a crime and sentenced to a period of incarceration of at least six months. We're not talking about someone who got pulled over for reckless driving. We're talking about someone who has been sentenced to jail. This is serious.

The guidelines of the Criminal Code say that judges shouldn't avoid sentencing people to jail, if that's the way it should be. These are people being given a jail sentence by judges who have heard these cases and have made a decision on a sentence. That's where the difference is. If we were talking about deporting everyone who was convicted of shoplifting one time, I would have a real problem with this, but that's not what we're talking about here, Mr. Leung.

Mr. Chungsen Leung: That's right. My understanding of Bill C-43, is that this particular bill really addresses serious criminality.

Mr. Reynaldo Reis Visarra Jr. Pagtakhan: That provision does.

Mr. Chungsen Leung: Mr. Chair, I guess my time's up.

Thank you.

The Chair: Thank you, Mr. Pagtakhan, Mr. Greene, Ms. Froc. Thank you for your contribution to the committee. We will take your comments under advisement. Thank you very much for appearing with us.

We will suspend.

● _____ (Pause) _____

●

● (1635)

The Chair: We'll reconvene. This meeting will end at 5:25 p.m. and then the committee will go in camera to discuss committee business.

Our final witness is *Table de concertation des organismes au service des personnes réfugiées et immigrantes*, Rivka Augenfeld, representative, and Richard Goldman, refugee protection coordinator.

You've both been here before on Bill C-31, and we thank you for appearing before us again to give us your views on Bill C-43. Between the two of you, you have up to 10 minutes to make a presentation to the committee.

Thank you.

[*Translation*]

Ms. Rivka Augenfeld (Representative, Table de concertation des organismes au service des personnes réfugiées et immigrantes): Thank you very much, Mr. Chair.

My thanks to the committee for inviting us. I will start in French and then my colleague will continue in English.

The Table de concertation des organismes au service des personnes réfugiées et immigrantes is a group that has existed since 1979. It was established when the boat people were arriving. Everyone here of a certain age remembers that time, I think.

Our organizations operate all over Quebec, helping immigrants and refugees to integrate into Quebec life. The organizations outside Montreal principally provide help to refugees who are selected overseas and refugees sponsored by the government. Our organizations also work with refugee claimants. Normally, the work is done entirely on a volunteer basis because no government subsidizes it.

Today, we want to talk to you about what goes on in the trenches, beyond the labels, because sometimes things are a little nebulous.

[*English*]

Before I hand it over to my colleague, Rick Goldman, I would like to say that Rick Goldman is a lawyer. He works for the Committee to Aid Refugees, which is a not-for-profit organization. He does not do private practice cases, so everything we're saying is coming from a community point of view.

Some of the things we'll be discussing today I hope you will listen with the ears of members of Parliament with constituents. I'm sure everyone of you has had in the past, or recently, cases where people come to you with problems, where you say, that it isn't quite like what you thought a so-called security risk looks like, or what a so-called person with a criminal past looks like. These are human beings in front of you. When you meet them and when you talk to them, you realize that life, as people have lived it, is often not quite the way it looks like on paper.

I will now hand it over to my colleague. We will be mostly addressing the brief you have received.

Mr. Richard Goldman (Refugee Protection Coordinator, Table de concertation des organismes au service des personnes réfugiées et immigrantes): Thanks, again, for your invitation. We are very happy to be here.

We're going to focus on one area of particular concern under Bill C-43: the denial of access to humanitarian and compassionate, or H and C, considerations to persons excluded from refugee protection and the denial of H and C considerations to persons found inadmissible on security grounds who apply for ministerial relief from such inadmissibility.

We'll start with a real-world example of a person who is currently being assisted by one of our member organizations.

This is Salma's story.

While still a student in her civil-war-torn country in Latin America, Salma was recruited into the student arm of the opposition movement. She helped run meetings, sometimes serving coffee and taking minutes, and was involved in organizing peaceful demonstrations. Years later, after peace accords were signed and the movement became a legal political party, she again volunteered during an election campaign. Salma says she inadvertently came across evidence of illegal activities and was targeted by party officials, who first threatened, and then brutally assaulted her.

She fled to Canada to seek asylum; however, the Immigration and Refugee Board found that her involvement in the movement, which had a guerrilla arm that had targeted some civilians during the civil war, excluded her from being considered for refugee protection in Canada. She was deemed to be “complicit in crimes against humanity”.

In addition, even though an official at the Canada Border Services Agency confirmed that Salma had never been involved in any act of violence and posed no danger to Canada, by the automatic effect of the law she also became inadmissible for permanent residence under section 35 of IRPA.

Canadian medical professionals believe that Salma was indeed the victim of sexual assault and that a return to her country would be extremely destructive to her mental health. She has no family to return to back home. Her only son and her ex-spouse have immigrated to Canada in separate immigration procedures.

Now, under the law as it stands today, Salma can still apply for permanent residence on humanitarian and compassionate grounds. In examining such an application, an officer would have to weigh the factors present: the hardship for Salma of returning to the country of her traumatization; her medical situation; the best interests of any child affected; the links she has developed to Canada; and, of course, the nature of her activities with the organization with which she was associated. The officer could then decide whether to grant Salma permanent residence on H and C grounds, including a waiver from her inadmissibility; however, Bill C-43 would render this impossible. She could not even make an H and C application.

In the previous presentation, I heard it referred to that people make H and C applications to delay their removal from Canada. Just to be completely clear on this, an H and C application does not delay somebody's removal from Canada.

This is a matter of great concern to us. It is our experience that Salma's case is not an isolated one. Rather, it is our experience that the exclusion clauses are being applied by the IRB in an increasingly broad manner. Our experience is corroborated by a comprehensive academic study which decries the growing culture of exclusion in Canada. This study, "The Growing Culture of Exclusion: Trends in Canadian Refugee Exclusions", which is cited fully in our brief, was published in 2011. It examined every exclusion case made public during the period 1998 to 2008. Here are some of the conclusions:

> Exclusions at the IRB have increased dramatically during this period: from two cases in 1998 to a high of 114 in 2004 and 79 in 2008:
>
> The Canadian government has aggressively pursued exclusion by intervening in IRB cases and it has employed 'creative' arguments at all levels of adjudication.

On the issue of complicity:

> The cases reveal a troubling state of affairs: it is who you are or who you are associated with, rather than what you have done, that often provides the basis for exclusion.

Further:

> These understandings of complicity go beyond the findings of international criminal tribunals, which 'only dealt with persons most responsible for international crimes'. In this way, refugee law is being used to assign culpability at a far lower threshold than international criminal law.

Finally, the authors, who are two academics from UBC, conclude:

> This fails to conform to the humanitarian requirements of international refugee law and to international human rights law, and it ignores the fact that many of the excluded claimants have never participated in violence or specific crimes, and would not have been excluded a decade ago.

● (1640)

That's the first part of our main concern.

The second part is the eliminating of agency considerations from applications for ministerial relief. We sometimes see people whose stories are very similar to the one I just told you, but who are caught by the inadmissibility provisions in a different way.

For example, even if the IRB had chosen not to exclude Salma and had granted her refugee status, she could have subsequently found herself declared inadmissible to Canada, under section 34 of IRPA, for having been a member of an organization that there are reasonable grounds to believe has engaged in instigating the subversion of force of any government.

I don't think I'm the first person to tell you this, but as has frequently been observed, even Nelson Mandela, were he not an honorary Canadian citizen, would fit this definition.

Under the law as it stands today, such persons can apply for ministerial relief from their inadmissibility. To succeed, they must satisfy the minister that their presence in Canada would not be detrimental to the national interest. Historically the minister has taken agency considerations, such as the ones I was talking about earlier, into account in examining such requests.

However, Bill C-43 would amend the relevant section to read that 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.

Under the same provision of Bill C-43, which I talked about with Salma's case, such persons are also barred from filing applications for permanent residence on H and C grounds. They're barred either from asking for ministerial relief on humanitarian grounds or applying for permanent residence on humanitarian grounds.

We believe that this complete exclusion of H and C considerations in these contexts is contrary to Canada's international obligations under the International Covenant on Civil and Political Rights, which among other things provides protection of family rights and security of the person.

We believe it also violates Canada's obligations under the Convention on the Rights of the Child since it would eliminate consideration of the best interests of the child, which is normally an important part of H and C decision-making. It would also violate our obligations under the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, which protects women against gender-based discrimination.

● (1645)

The Chair: Perhaps you could wind up, Mr. Goldman, please.

Mr. Richard Goldman: Okay.

Our recommendations are that clauses 9 and 10 of Bill C-43 should be amended to ensure that persons excluded from refugee protection are nonetheless permitted to file H and C applications and have them fully considered.

Clause 18 of Bill C-43 should be amended to eliminate any restrictions on the factors the minister may consider in examining requests for ministerial relief.

Thank you.

The Chair: Thank you very much.

Mr. Weston has the floor.

[*Translation*]

Mr. John Weston: Thank you, Mr. Chair.

My thanks to the witnesses for being here.

I think that everyone here recognizes that Canada is perhaps the most generous country in the world when it comes to our refugee immigration policy.

Isaac Newton said that to every action there is a reaction. We have to think of a way to maintain that generous policy. We have to decide how we can keep bringing 260,000 immigrants into Canada each year, how we can maintain that level of intake that is perhaps the most generous in the world.

My question is about the people with permanent resident status in Canada. Is it reasonable to expect those people to refrain from committing serious crimes here in Canada in order to keep both their status and the trust of Canadians and other immigrants who would like to come to Canada?

[*English*]

Mr. Richard Goldman: I absolutely agree. I think all our member organizations agree that it is not too much to expect foreign nationals to obey the law, just like Canadian citizens. We absolutely agree that where there's an action there should be a reaction. The question is one of proportionality, one of degree.

I think everyone here agrees that foreign criminals should be removed from Canada as quickly as possible. Our concern is that this new definition of serious criminality has lowered the threshold alarmingly. If the 18-year-old kid who lives next door to you breaks into your house and drinks some of your liquor, you'd probably want to have him punished. You'd probably even want to give him a kick in the behind, but you probably shouldn't be taking the law into your own hands. If he came from Iran or Eritrea at age three, he has no family back home, he doesn't speak, read, or write the language, I think most Canadians would agree there should be some weighing of the humanitarian considerations as to whether he should be deported from Canada.

● (1650)

[*Translation*]

Mr. John Weston: Mr. Goldman, allow me to interrupt you.

Under our criminal process, people like that have all the rights provided by the Charter, including the presumption of innocence. They can also plead the consequences of immigration if they are found guilty of a serious offence in Canada.

Canada provides people like that with a lot of rights. If they commit crimes and are not deported, I am afraid that Canadians will lose confidence in our system. The most serious consequence would be that the minister might not be able to maintain the generous policy any longer. What is your opinion?

Ms. Rivka Augenfeld: Without wanting to pull the rug from under my colleague's feet, I would like to answer that question.

Here is the problem. If the act is amended so as to catch very dangerous criminals, as you claim, it will end up catching people such as those Mr. Goldman described.

That net is too big and too wide. We want to catch the very dangerous criminals, of course. Everyone supports that. We do not want dangerous criminals. I too am opposed to people who have committed war crimes coming here. But the net ends up being too wide.

[*English*]

The net is cast too widely, and it captures people and gives them no relief, people you did not intend to capture. I don't think you would intend that Salma not be granted some kind of relief. She didn't do anything. She is not a criminal. Why are we punishing her in the same way we're punishing someone who committed terrible crimes against humanity?

As you said, we have to have a way here in Canada whereby we apply the law and we are generous, to make a distinction and to have measures of relief that can help a person like Salma while not giving years to some criminal who committed grave crimes against humanity.

[*Translation*]

Mr. John Weston: Salma's case aside, I was scandalized to learn that 850 people appeal on humanitarian grounds each year in order to delay the process. What do you think about that?

[*English*]

Mr. Richard Goldman: I'd like to go back to your exact question, which was about the criminal justice system. It's my understanding, from reading court of appeal jurisprudence from different provinces including Alberta and Quebec, that the courts are not seeing it that way, in terms of being able to present immigration arguments at the sentencing stage. I'm not the world's greatest expert on criminal law, but I don't believe it's settled that across Canada you can make immigration-related arguments when it comes to sentencing.

Mr. John Weston: It was made very clear by our previous witness, Mr. Goldman.

Mr. Richard Goldman: That's not my understanding. I'll leave it to the criminal law experts.

I would say that before the government goes ahead with a provision that would remove humanitarian discretion, you should make absolutely sure that this argument can be made in criminal courts across Canada. It's not my understanding that it can.

The Chair: I'm sorry. We could go on, but our time has expired.

Go ahead, Madam Groguhé.

[*Translation*]

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

I would first like to thank our witnesses for being here.

I would also like to congratulate you, both the Canadian Bar Association and the TCRI, for the quality of the presentations you provided in order to draw our attention to the potential concerns and problems you see with Bill C-43.

We feel that civil society and those of us who represent that civil society are striving to make sure that the laws that govern us can be just, fair and respectful not only of the Canadian Charter of Rights and Freedoms but also of the obligations we have accepted, as you mentioned, by signing certain international agreements.

Mr. Goldman, in your brief, you express concern at what you called a culture of exclusion in Canada. More specifically, you mention the exclusion of failed asylum claimants under article 1F of the Geneva Convention and of those seeking asylum on humanitarian grounds, even when Canada Border Services Agency officers confirm that they have never taken part in any crimes and that they represent no danger for Canada. Under Bill C-43, they have to be deported, even if that exposes them to torture.

Why is the situation like that, in your view? On that point specifically, what recommendations could you make to this committee?

● (1655)

Mr. Richard Goldman: Thank you very much.

I think we are going a little far in saying that refugee claimants like that could be deported even when they are in danger of being tortured. Actually, under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Canada would be required not to deport them.

It is true that, with the elimination of the pre-removal risk assessment… No, that's right, it stays in place for people who are deemed inadmissible.

In any case, we would be going too far to say that those refugee claimants will be sent back if we know they are likely to be tortured. But it is definitely the case that they will not be able to apply for permanent residence on humanitarian grounds.

To show the kinds of grounds that we mentioned in our brief, namely links with Canada, not having committed acts of violence, and medical issues, our recommendation is not at all complicated: do not eliminate the right to apply on humanitarian grounds. For reasons of which I am unaware, some people seem to think that the act of applying on humanitarian grounds delays removal. I repeat that this is not the case. Nothing in the Immigration and Refugee Protection Act indicates that removal is suspended when an application is made on humanitarian grounds. That is not the case at all.

Making an application does not guarantee that it will be accepted. An immigration officer sits down, weighs the factors involved, assesses the person's difficulties, any medical issues and the overriding interest of any child involved.

Our recommendation has nothing complicated in it. Leave that avenue open. Let immigration officers do their work as they have always done. Let them decide on the claims. Removals will not be suspended because, at the risk of repeating myself, an application on humanitarian grounds does not have that effect.

Mrs. Sadia Groguhé: The rise of the culture of exclusion shows that the notion of complicity is being given an ever-broader interpretation in Canada than the one given by international criminal courts.

What specific problem does this cause, in your opinion, especially in terms of access to international protection?

Mr. Richard Goldman: It is very clear if you look at the figures. In 1998, there were two cases and now there are between 80 and 100 each year. Clearly it is expanding.

I really recommend that you read a study by two professors at the University of British Columbia, Catherine Dauvergne and Asha Kaushal. It is called *The Growing Culture of Exclusion: Trends in Canadian Refugee Exclusions.* It examines the cases of a number of people who have done nothing violent, who may have had certain roles without knowing what was happening elsewhere in the movement they were part of, like Salma, for example. Clearly, anyone who is denied the protection they need becomes a potential case of refoulement to persecution.

Mrs. Sadia Groguhé: Thank you.

Our previous witnesses stressed the need for much wider consultation on Bill C-43. They also mentioned that Bill C-43 casts much too wide a net. One of the witnesses advocated a triage process for crimes and for criminals. What do you think about that?

● (1700)

Mr. Richard Goldman: I am in full agreement with that person. I know that we are not here to talk about the refugee status determination system, but, time and time again, we are presented with the fact that it sometimes takes 40 or 50 months to deport someone who has been denied asylum. My personal experience, and the experience of the members of our group, is that we often waited 15 months, for example, before being called to a pre-removal risk assessment.

The same thing goes for crime. The Canada Border Services Agency can conduct a triage to prioritize the sensational cases. A little earlier, we were talking about those sensational cases. It seems to me that all those cases are already covered by the two-year rule. Right now, there is a rule saying that, with a sentence of two years or more, there is no right to an appeal. So I imagine that serial killers, for example, had no right to an appeal, because they had already been sentenced to more than two years.

We are concerned that the threshold is going to be very low from now on. Earlier, I gave the example of someone breaking into his neighbour's house. Under section 348 of the Criminal Code, breaking and entering with intent to commit theft can result in a life sentence. If you break into a shopping centre to steal some DVDs, you can get up to ten years. But now, if you get six months, you can no longer have humanitarian grounds.

I feel that everyone agrees that foreign criminals should be deported as quickly as possible. The question is to define what constitutes a serious crime. As my colleague Rivka said, when we look at similar cases…

[*English*]

The Chair: We have to move on.

[*Translation*]

Mr. Richard Goldman: —what some people call serious criminality does not always seem so serious to us.

[*English*]

The Chair: Thank you.

We'll go to Mr. Lamoureux.

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

I appreciate the comments from both witnesses. I want to pick up on the whole issue of humanitarian and compassionate grounds.

Salma's story is a very compelling one, I must say. And you just finished citing a couple of other examples.

It's worth emphasizing that all we're saying is that we should allow for that consideration to be given. That's really what we're talking about. We're not saying that they should be allowed to stay. We're saying that they should be allowed to have that opportunity for compassionate and humanitarian grounds. Is that correct?

Mr. Richard Goldman: That's correct, absolutely. We're talking about two very different situations in our brief. One is people who are asking for refugee status and are excluded under what we feel are overly broad exclusion provisions. We feel that they should have access to humanitarian considerations. We're presenting a real-world case to show that.

I heard in the previous presentation that there are war criminals and that we have to get rid of them right away. Somebody like Salma, who distributed pencils and coffee at meetings, has been labelled a war criminal. That's one situation. Maybe she won't be able to stay, but she should at least have the chance to have her humanitarian case considered.

The second case is the kid next door who breaks into your house, drinks some of your liquor, and gets a six-month sentence. He hasn't lived in Eritrea or Iran since he was three. We feel that he also should have access to a humanitarian appeal. That doesn't mean he'll end up staying in Canada.

Mr. Kevin Lamoureux: I want to pick up on that particular example. There are some 1.5 million permanent residents. This bill potentially is going to have a profound impact on the lives of many of these people who call Canada their home. Thousands of those people came here as young children. When someone who came here at age three has committed a crime, even if it's a minor crime, is there not any sort of societal responsibility for that young person? In other words, should young people, say eight years old, be exempt, at the very least, from this legislation?

Ms. Rivka Augenfeld: I would argue that one really would have to look at this. There has to be some discretion to be able to look exactly at the humanitarian considerations.

I would submit to you that some children who came here at a very young age do not know that they are not citizens because it's their parents, for whatever reason, who didn't get citizenship for them, and now it's a little late. It's not that they didn't do anything. They did certain acts, but are the acts worthy of getting them sent back to a country where they know nobody? It also means that there is no chance of rehabilitation.

One of the things that we've been told by some of our friends who are experts in penal stuff and rehabilitation is that if you put a young person in jail and they know that at the end of the day they'll be deported, where does that leave them in terms of their enthusiasm for rehabilitation, when in fact proper rehabilitation could put them on the right road? They are barred from citizenship because their parents never thought it was important. It's not their fault.

On the other hand, when we try to look at some of these other cases that we've been describing, we're looking at people who never committed any crime. They didn't commit a crime. I think it's very easy for us sometimes, sitting here, and I include myself, to make judgments about what people should have done or would have done somewhere in a country where's there's a dictatorship, where there is repression, where there is oppression, persecution, and torture, and what people sometimes do, faced with that, as young people. Then they come here and are faced with the fact that they are doubly and triply victimized because of an association with other people who might have been doing things that this person was not aware of.

Salma is not alone. We're using her as an example, but, please, in the same way that sometimes examples from 20 years ago are used to justify things that we're doing now, this is not an isolated case. It's a particularly compelling one, but there are others. We see them. What we're pleading for is the discretion to allow the person's circumstances to be considered and not have her barred from this consideration, so that no matter what might happen to her as a result of getting returned, we're not going to be responsible if she's returned to torture or returned to a total mental breakdown, or whatever else might happen to her.

● (1705)

The Chair: I'm sorry, Mr. Lamoureux.

Mr. Dykstra.

Mr. Rick Dykstra: I'm intrigued by your example. I suppose we're all using them to make our points here on the bill, and I appreciate that. I think all of us have the ability to do that and should be allowed to use examples to explain what we're talking about.

Salma, the person you're talking about—which is not her real name, but I understand the need to protect her—wasn't a permanent resident. She was applying for refugee status. You're relating a case that you could have presented under Bill C-31, when we did our hearings on that bill. I'm not sure why you're presenting a case of a refugee on Bill C-43, which specifically deals with those who already have permanent residency. She doesn't have permanent residency. If she was coming from a foreign country and was applying to come to Canada, and if she had been convicted in her own country or charged and it was believed to be true, she would not be admissible to Canada, but she could actually go to the Federal Court to try that. She could also apply under H and C because she actually isn't in the country yet.

I'm not sure why you're bringing this case in under Bill C-43. She's applying for refugee status, so she's not a person who falls under this piece of legislation. She'd fall under Bill C-31.

Mr. Richard Goldman: She does. This legislation does many things.

One of the things it does is it takes away the right to apply on H and C grounds for permanent residence of people who are excluded under section 35. As it's explained in our brief, by being excluded from refugee protection under article 1F, she is automatically excluded under section 35. Our citations are there. The sections of the law are there. It's all there. The reason we didn't raise this when we came on Bill C-31 was that Bill C-31 didn't take away the right of people like Salma to apply on H and C grounds. This piece of legislation, under clauses 9 and 10 of Bill C-43, does take away her right to apply for permanent residence on H and C grounds. That's—

Mr. Rick Dykstra: You're making my argument for me. She actually, then, has the opportunity under Bill C-31 to apply for H and C—

Mr. Richard Goldman: No, this takes that right away.

Mr. Rick Dykstra: Aside from our differences of opinion on this, you haven't commented on proposed section 42.1, which would allow her to apply:

> The minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

There is the opportunity, and this is what I find interesting about the dynamic in terms of negative discretion, which seems to get brought forward on a regular basis, but I never hear from those who are opposed to negative discretion. I never hear any comments about proposed subsections 42.1(1), 42.1(2), and 42.1(3), which do not exist in the existing legislation but do under the proposed legislation. I'm assuming that if you were not in favour of the whole aspect of negative discretion that you would therefore not be in support of the new piece, which adds positive discretion to allow the Minister of Public Safety, if he or she sees fit, to allow the individual to stay in the country.

● (1710)

Mr. Richard Goldman: Please read very carefully the sections that we cite at footnote 5. She is caught by proposed paragraph 35(1)(a). The proposed subsections that you just mentioned do not apply to proposed paragraph 35(1)(a). She cannot ask for ministerial relief. Persons who are excluded from protection under article 1F(a) of the convention and therefore inadmissible on proposed paragraph 35(1)(a) have never been able to apply for ministerial relief. They have been able to apply for permanent residency on humanitarian grounds. Bill C-43, under clauses 8 and 9, is taking that away. We didn't talk about it under Bill C-31. Bill C-31 didn't take it away. Bill C-43 is proposing to take it away.

Moving to the—

Mr. Rick Dykstra: Sir, just hold on a second.

The chair always wants to give people the time to respond to questions, and I want to do the same, but we have seven minutes, and it cuts into the area that I'd like to go to. I know this isn't an easy dialogue to have because it's technical. The fact is the example that you cite is someone who was refused refugee status. She didn't qualify for refugee status. You're making the leap.

The examples we bring up are of convicted individuals. They've gone through court and have been convicted of a crime. You're speaking about, and you want to concentrate on, a very small area where an individual was not given refugee status. You may have your opinion as to whether the IRB made a correct or incorrect decision, and I respect that, but you can't use a decision that was denied to suggest that this individual has now been denied something else when they don't have refugee status to begin with.

Mr. Richard Goldman: She was denied refugee status, as we explained, because of a very low-level involvement in a multi-faceted opposition movement, which we—

Mr. Rick Dykstra: We agree with the decision, but the decision was not to allow her refugee status based on her—

Mr. Richard Goldman: Okay. Let's agree with what you said so far. The point we're making is that person with her profile was at least allowed to make a humanitarian application and is still allowed today, but would not be if Bill C-43 is adopted.

Mr. Rick Dykstra: Because she isn't a true refugee.

Mr. Richard Goldman: Sorry.

Mr. Rick Dykstra: Because she's not a true refugee. Her application was denied, and therefore, the rules fall into place. The rules are the rules and they need to be followed. Just because you don't happen to like the rule doesn't mean it isn't one that has been judged to be—

Would you say the IRB is not a quasi-judicial and fair board? Are you suggesting—

Mr. Richard Goldman: I don't understand why you're saying that because you don't like the rules, those are the rules. We're talking about a change in the rules. We're talking about Bill C-43 changing the rules so that someone like Salma can't apply on humanitarian grounds. That's what we're talking about.

The Chair: I have to say time, unfortunately.

Ms. Freeman.

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

Thanks to our witnesses for coming to present to our committee today.

The more we hear about Bill C-43, it seems that we're not only creating legislation that's going to affect criminals, which is supposed to be the intention—when we asked the minister about it that was the intention; it's supposed to affect serious criminals, and we need to get them out of our country faster—but it may also be affecting or creating victims.

Could you speak to other examples where victims may be created or may be kept out of the country due to these changes in Bill C-43?

● (1715)

Ms. Rivka Augenfeld: I'm going to ask my colleague for help on this, but there was a case recently in Montreal where a very seriously mentally disturbed man was killed in an altercation with the police. He was an Iranian refugee. He had been recognized as a refugee. I don't think he was a citizen; no, he was not. Because he was disturbed, he ended up walking into a building looking for shelter. He was a homeless person.

Even though he couldn't have been deported, the CBSA started deportation proceedings against him. The starting of those deportation proceedings against him put him over the edge and scared him so badly that he ended up having a psychotic breakdown.

I will turn it over to my colleague to explain what the implications are there.

Mr. Richard Goldman: In this case it was a break and enter, a crime that is punishable by 10 years or more. Although he was a refugee, it was extremely unlikely he could be deported because he didn't seem to be a danger to the public and, in fact, had mental health problems. CBSA chose to take deportation proceedings against him simply to get the deportation order on the file. This actually sent him over the edge and led to a fatal altercation with the police. We do think it's an example of where overzealousness can lead to a very adverse consequence for somebody.

[*Translation*]

Ms. Mylène Freeman: Witnesses have told us that some false declarations may not be intentional.

Can you give us your opinion on that change?

Mr. Richard Goldman: It is very clear that they are not intentional in some cases. It may be made by a consultant or perhaps even by a family member. It can happen in situations that we can call humanitarian. Let me give you a concrete example.

A young Congolese woman was raped in that country when she was 14 years old. She did not declare her child. Her parents were accepted as refugees through family reunification. The young woman came, but she was ashamed to declare that she had had a child as the result of a rape. She was caught by that darned paragraph 117(9)*d* of the immigration and refugee protection regulations. She was helped to put in a sponsorship application on humanitarian grounds.

In certain cases, people do not declare family members. She could have been accused of making false statements. Luckily, she was not charged. If she had been charged and found guilty, not only would she not have been allowed to bring her little daughter with her, but she would also have been inadmissible to Canada for two years. Under Bill C-43, she would be inadmissible for five years. That example shows the extent to which the measures are much too extreme.

[*English*]

Ms. Rivka Augenfeld: Do we have time for another example?

Ms. Mylène Freeman: Sure.

How much time do I have, Chair?

The Chair: Thirty seconds.

Ms. Mylène Freeman: Oh, okay. What I'm actually going to ask is that you submit any examples you have to the committee, through the chair.

To finish up, do you think it's possible to make the deportation process for those we do want to get out of the country more effective without the changes made in this bill?

Mr. Richard Goldman: I don't think these changes are necessary because we already have a rule that says if you have a two-year prison sentence you don't have a right to an appeal. It seems to me the ones that we're going after here are the less serious criminal offenders.

Ms. Mylène Freeman: Thank you.

The Chair: Thank you.

Mr. Opitz.

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

Even the less serious criminal offenders shouldn't be anyway; I mean, they shouldn't be coming to this country committing crimes in the first place. My parents came here. Chungsen Leung came here. Many other people in the House have come from other places. They didn't arrive in Canada saying that they are going to live in this country but, by the way, they are going to commit some crime along the way. Generally, most people don't do that. But some do, and some of those serious criminals have committed serious crimes, including murder, including trafficking, including fraud, including assault, and a whole host of other crimes. We do have a list, and I could go down that list.

You're talking about the criminals. Again, I'm not hearing much about the victims. Have you actually talked to any victims' groups about this, and what the impact of these serious criminals have on their families? Never mind the criminal's family, what about the victim's family and the impact it has had on them?

I'm going to give you an opportunity to answer that. Have you talked to victims of crime perpetrated by serious foreign criminals?

● (1720)

Mr. Richard Goldman: Well, I have to confess, no. We didn't come here primarily to talk about the criminal aspects, but we are happy to talk about them, because we have some experience. I think the point is absolutely well taken. It's not too much to ask foreigners, foreign nationals to come here and respect the law. It's absolutely a normal expectation of Canadians. Again, I think it's just a question of proportionality.

We heard briefly in the previous presentation about sensational crimes. It seems to me when we're talking about murder, serial killers, and so on, these were already being dealt with by the previous legislation. We're here today to talk about how Bill C-43 could improve things. I'm not understanding how lowering the threshold for the right of appeal from two years to six months is going to have anything to do with serial killers and so on. Maybe you could explain that.

Again, really to show what we're talking about, the people with the six-month sentences are the kids next door who break in and drink some of your liquor or who break into the mall and steal DVDs.

Ms. Rivka Augenfeld: Could I just add something? Yes, we do speak to victims. We speak to people who are victims of very serious offences overseas.

We saw the case of Leon Mugesera, who was a Rwandan accused of crimes against humanity. We have spoken to many of his victims. There was a case of Désiré, the Rwandan guy Canada did bring to trial. Canada is to be commended for having brought him to trial. Many of those victims were here. Some of them were brought from Rwanda to testify.

We are not saying that people who are very serious criminals, who have committed crimes against humanity, and whose victims of those crimes are here should not be dealt with. We're saying that sometimes—and I'm sure you're going to end up seeing people in your offices. I'm not saying that to be facile. You're going to see people in your offices who are caught up in this, and you're going to say, “Well, this is not quite the person I had in mind”, and you're going to be asking for relief for these people, and you're going to find that it's very hard to get it.

Mr. Ted Opitz: Do you believe that our justice system is fair and compassionate generally?

Ms. Rivka Augenfeld: I think our justice system is generally fair and compassionate, but what we're doing here is denying people access to certain levels of justice and to certain levels of appeal.

Mr. Ted Opitz: I think judges, in their wisdom, will screen out a 20-year-old kid who steals a little booze. That's kind of trivial. What we're really talking about here is a removal of serious criminals from Canada.

Are you aware that other countries, like the U.K., the U.S., New Zealand, and Australia, have provisions in place already to bar individuals who would harm the public interest and who otherwise are inadmissible? In fact, the provisions in a lot of those countries are far more broad and discretionary than those in Bill C-43. Are you aware of that?

Mr. Richard Goldman: I was under the impression that the U.S. or the U.K. uses a one-year threshold. We would be going to six months. Again, I'm not claiming to be the world's expert on this. We just think it's a question of proportionality.

On this issue of whether judges are prepared to look at immigration considerations, it seems to me I've read contrary jurisprudence on this. If the committee is going to base its conclusions on the idea that judges across Canada are going to fully weigh humanitarian immigration considerations before rendering a sentence, I think you had better get very solid information on that before you go forward.

Mr. Ted Opitz: That's why we have a justice system, so that people do follow due process. They will get due process out of this and be treated fairly for it.

Do you think that the Canadian taxpayer—

The Chair: Thank you.

I'm sorry, but we have to move on to Mr. Menegakis.

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

Thank you to our witnesses.

Clearly with Bill C-43 we are trying to keep foreign criminals out of our schools, out of our parks, out of our shopping centres, out of our neighbourhoods. We are trying to keep them away from our families.

The notion that somebody who breaks into somebody's home just to have some booze is not committing a serious crime can be quite extensively debated. The real crime is that you're breaking into somebody else's home. If your child were in that home when that break-in happened, it would create, in my opinion, potentially lifelong irreparable damage to your family because that 20-year-old decided to break into your home. He didn't walk into a store and take a pen and not pay for it. He broke into somebody's home. I would suggest that is not a good example in your case.

Neither is the case of invoking the name of Nelson Mandela, I might add, because we can get into a whole debate about that and about whether or not we as Canadians were supportive or not of apartheid in the incredible crime that was done against the good people of South Africa.

Having said that, I'm going to refer to Mr. Tom Stamatakis from the Canadian Police Association. He said that in his experience, criminals who receive a custodial sentence of six months or more have committed very serious crimes and are quite often repeat offenders.

Do you agree or disagree with his analysis?

● (1725)

Mr. Richard Goldman: I don't know exactly what his analysis is based on. I can read the Criminal Code, like anybody else, and see that the examples I gave could lead to a six-month sentence.

Again, we could debate how serious break and enter into a neighbour's house to steal some booze is, but I think most Canadians would agree that, if the young person in question had been in the country his whole life, came from a country like Iran or Eritrea, didn't speak or write the language, then at least there should be some assessment of the humanitarian considerations. Maybe he'll be out the door at the end, but at least there should be some look at the humanitarian considerations.

The Chair: Thank you, Mr. Goldman.

Ms. Freeman has drawn to my attention that the clock at the back of the room has stopped and that our meeting, therefore, has come to an end.

Ms. Jinny Jogindera Sims: I was getting all excited. I thought I had a turn.

The Chair: Ms. Augenfeld and Mr. Goldman, we thank you for your contribution to the committee.

We have some more work to do. We're going to go in camera, and we are running out of time.

[*Proceedings continue in camera*]

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