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Mr. Borys Wrzesnewskyj

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● (1530)

[*English*]

The Vice-Chair (Ms. Jenny Kwan (Vancouver East, NDP)): Committee members, we're going to get started. As you may know, our regular chair is tied up in the House of Commons. I believe he is speaking to a motion at this moment, so he'll join us as soon as he can. In the interim, I will chair this portion of the committee meeting.

First, I'd like to thank all our witnesses. We have three witnesses here and one on video conference. We will begin with Jamie Liew, immigration lawyer and law professor from the faculty of law, common law section, University of Ottawa; also Lobat Sadrehashemi, lawyer; and then we will have Patricia Wells, barrister and solicitor.

Lobat and Jamie will get seven minutes together, and then Patricia Wells will get seven minutes on her own. Then Anabela Nunes on the videoconference will get seven minutes on her own.

We will begin. Jamie.

Ms. Jamie Liew (Immigration Lawyer and Law Professor, Faculty of Law, Common Law Section, University of Ottawa, As an Individual): Thank you for inviting me. I'm here to talk to you about one provision in the regulations and particularly section 117(9)(d). This provision defines who is not in the family class and therefore persons who are not eligible to be sponsored by a permanent resident or a citizen of Canada through the imposition of a lifetime ban on sponsorship.

This provision does not apply to refugees only but everyone who wants to bring family to Canada.

We are told that this rule aims to protect the integrity of the immigration system by preventing misrepresentation in family reunification. Under this rule, if an applicant does not disclose the existence of a family member at the time of their immigration application, irrespective of whether they came as a refugee or economic migrant, they are subject to a lifetime ban and can never sponsor that family member, even if they are genuine family members.

When a law purports to combat a problem, many of us take for granted that it is doing so effectively and also that it is not harming people.

When we are talking about section 117(9)(d), the research that I and some others have conducted shows a completely different picture. There are five reasons why section 117(9)(d) should be repealed.

First, the evidence shows that the problem of fraud in family reunification is benign. And looking at the reasons for non-disclosure and non-examination, 90% of cases that had section 117(9)(d) applied to them had nothing to do with fraud but involved tragic and heartbreaking reasons. There are five general headings of reasons why people don't disclose their family members. The first is misunderstanding, the second is failure to update an application, the third is fear of exposure, the fourth is lack of knowledge or bad advice, and the fifth is lack of awareness a child existed at the time.

Second, the provision does not provide any discretion or flexibility on the part of the decision-maker to exclude cases where fraud is clearly not an issue. And while the government has pointed to alternative remedies such as humanitarian and compassionate assessments, our research reveals a disturbing finding that this option is applied unevenly. At best, the option provides relief to only half of the 90% not engaged in fraudulent activity. Further, where relief is given, it means repeated attempts through multiple applications, appeals, and therefore extremely lengthy separation, not to mention the high costs of legal support.

In our research, approximately 45% of successful cases had to wait five years or more to be reunited with family. We have observed one ongoing case waiting for 16 years and counting.

Third, this exclusion clause has prevented families from reuniting with their children, despite the best interests of the child clearly being reunification.

Fourth, the regulation not only imposes family separation, but also places a chill on persons seeking to bring their family to Canada. This is because applicants fear they will lose their status when they submit an application and where the regulation applies.

Finally, the immigration system already has in place tried-and-true mechanisms for dealing with misrepresentation. This can be found in section 40 of the act.

For all these reasons, the status quo is not acceptable. The law as it's stated now is overbroad, arbitrary, and harsh. The provision is simply not needed, given that the problem of fraud is overblown and mechanisms are already in place to deal with misrepresentation. Not only does this exclusion clause erode the humanitarian and compassionate objective of reunifying families provided by the act, the provision does extreme harm by permanently separating genuine family members. It penalizes vulnerable individuals, including children, with the pain of separation for a lifetime.

Thank you.

● (1535)

The Vice-Chair (Ms. Jenny Kwan): Thank you very much.

We'll move on to Ms. Sadrehashemi.

Ms. Lobat Sadrehashemi (Lawyer, As an Individual): Thank you for inviting me to testify.

In my time I will address two issues that touch the core of the lives of many thousands of immigrant women: conditional permanent residence for sponsored spouses; and the unacceptable delays in processing the permanent resident applications of live-in caregivers.

This committee has recently heard from Minister McCallum that the government is planning to move forward with the regulatory amendments to eliminate conditional permanent residence for spouses. This issue is very close to my heart because I have seen first-hand in my office women who are suffering through making the awful decision of remaining in abuse or living with the fear that they may lose their status in Canada.

I will make three points on this issue. First, what we should do right now, even before amendments are passed into regulation; second, what is required in the amendment; and third, the kind of education that will be required to implement this change effectively.

We must act now, even before regulatory change comes into effect. This measure has been in place for four years. We know women are staying in abusive relationships because of it. If the government is committed to eliminating it, it can take a number of actions right away.

On a daily basis, people enter Canada as permanent residents and are told their status is conditional on living with their spouse in a conjugal relationship for two years. We should not allow for one more woman to believe that she must endure abuse or risk losing her status. Officials should be providing a letter on arrival explaining that no action will be taken against them if they breach the conditional requirement.

Second, IRCC and CBSA could issue an operational bulletin directing that investigations be halted on breaches of conditional permanent residence requirement. As to the content of the regulatory amendment, the amendment has to be the elimination of the conditional category altogether. The minister has said this is what he will be proposing. Nothing short of this can be accepted.

The amendment also has to deal with retroactivity. No one should have to live with the perpetual fear that they could be reported for having breached the condition in the past. This fear of reporting is a tool used by abusers. We should be able to tell our clients that without a doubt they will not be subjected to an investigation for breaching this condition.

Lastly, the damage of this provision is not cured simply by changing the law. The idea that you must live with your spouse for two years is now very ingrained in communities and I have no doubt that the legend of conditional permanent residence will continue. To be effective, this type of change requires a serious multilingual communication strategy that makes it clear that the government is not requiring you to live with your spouse to maintain your status.

On another topic, I would be remiss not to state to a committee studying family reunification that something must be done to deal with the totally unacceptable backlog of processing for permanent resident applications of live-in caregivers. I checked yesterday; the average processing time is 51 months, so four and a half years. This is after they've already been separated from their spouse and children fulfilling the two-year work requirement.

For other economic categories, it's six months. The requirements are the same: medical and criminal checks, and examination of overseas dependants.

I heard Minister McCallum say to this committee that there would be a general effort to reduce the backlog but the focus would be on nuclear family sponsorships, and not on the caregiver category. If we value this program, we have to do something about it. The backlog is at a point where it requires a targeted effort.

Thank you.

The Vice-Chair (Ms. Jenny Kwan): Thank you very much.

We will move on to Ms. Patricia Wells.

● (1540)

Ms. Patricia Wells (Barrister and Solicitor, As an Individual): Thank you. I come to this committee with a background of about 32 years as a refugee and immigration lawyer. I deal a lot with the Spanish-speaking community, so I have a lot of experience with people from Central and South America, but also other parts of the world.

I want to talk today about a case that comes from a different part of the world, the Philippines, and it's a case of a live-in caregiver. I want to use this case to illustrate two problems that I would like the committee to deal with.

One is the gap in the legislation about processing of overseas dependants of people who have made applications in Canada on humanitarian and compassionate grounds, H and C.

The other is about the age of dependency. Also throughout I think you'll hear, from all the submissions, that the delays in processing are causing serious issues in many of the programs we deal with.

In the case I'll cite, Marcellina was a nanny who came to Canada in 1999 as a live-in caregiver. As was just mentioned, live-in caregivers are able to bring their families after they have satisfied certain requirements. They can be landed in Canada with their family members whether they're overseas or not. Unfortunately for Marcellina, she was not able to be landed as a live-in caregiver under that program, because her husband was found to be medically inadmissible.

That turned out to be a mistake, later on. He was diagnosed with liver failure, but it turned out to be kidney stones. In the meantime she lost her ability to apply through the live-in caregiver program and therefore was obliged to make an application on humanitarian and compassionate grounds. The shift from being a live-in caregiver to applying on H and C grounds meant that she lost the ability to include her children in her own application for permanent residence, and that was catastrophic for Marcellina and her children.

Seventeen years later, her children and her husband were finally interviewed by the Manila visa office and it was found that there were no humanitarian reasons why the family should come here, even though she had fought and fought for years to be able to bring them. The reason so many caregivers choose Canada is that they know they'll be able to bring their families with them once they meet the requirements. In Marcellina's case, the only thing that was different, that made her not able to bring her children, was the fact that she was eventually landed on H and C grounds and not as a live-in caregiver.

In the submission I'm making, I recommend that section 69 of the immigration and refugee protection regulations be changed to allow people who are landed in Canada on humanitarian grounds to have concurrent processing for permanent residence of their family members overseas. That would not only have made a big difference for Marcellina but will make a big difference for many other people.

Concerning the delays, I'll just briefly say that now the delay is 51 months for a live-in caregiver. At the time Marcellina applied, the delay was much shorter, and to review her H and C application took five years. Then it took another year for her to get her papers so that she could sponsor her family, and by that time all her children were too old to be sponsored under the rules. As I say, it was devastating for the whole family.

I would like to briefly deal with the age of dependency. In 2014 the maximum age for a dependent child changed from 22 to 19, which means that children aged 18 and under are now eligible but those 19 and over are not. I know that the government has announced and reiterated that they will be changing this back to the former maximum age of 22. I hope they will also include the other provisions that used to apply before 2014, allowing children of any age to be considered dependents as long as they're still in post-secondary education. It seemed to work well. Again this change has made a big difference in people's family lives and their decisions about whether they can come to Canada.

● (1545)

I would urge that whatever legislative changes are needed be made as soon as possible, but in the meantime, there have to be some interim measures, which can be done through ministerial instructions or through policy change, to allow people who are now facing separation from their family members, or their children who are 19, 20, or 21 right now, to immigrate with the rest of their family.

So, if any interim measures could be made, it would be very good for the families and very good for the country as a whole, too.

I'll leave it there.

Thank you.

The Vice-Chair (Ms. Jenny Kwan): Thank you very much, Ms. Wells.

We will now go to Ms. Anabela Nunes, who is with the Working Women Community Centre, on video conference from Toronto.

Ms. Anabela Nunes (Settlement Counsellor, Working Women Community Centre): Good afternoon, and thank you for inviting me.

My name is Anabela Nunes, and I'm a settlement counsellor at Working Women Community Centre. Part of my role as a settlement counsellor is to provide accurate and up-to-date information regarding various immigration programs to anyone who seeks this type of service.

For the past five years, our centre has seen an increase in the number of people looking for assistance with the family reunification program. It is important to clarify that we do not provide legal advice to our clients. Our role is simply to guide them through the process and review applications for their completeness, in order to prevent applications being returned and to avoid further delays in processing times.

For anyone who has not gone through the process of sponsoring a family member, I can say that it can be a daunting and challenging experience, given all the requirements, eligibility criteria, and constant changes. The amount of paperwork involved in one of these applications is substantial, and the information on the IRCC website can be overwhelming.

My objective today is to highlight some of the challenges my clients have encountered when submitting requests and applications, and share professional observations dealing with the various immigration forms.

I would like to start off by talking about the processing of sponsorship of dependent children and adopted children. It should be a priority for this government. The current age of 18 as a cutoff age to be sponsored should be eliminated and increased to the age of 22, as it was a few years back. Children 19 to 22 years old are still greatly financially dependent on their parents. Many of our clients see that the current policy separates families and forces parents to leave the children behind either on their own or with family members.

In addition, given the fact that children under the age of 18 do not have to provide criminal records, the processing of these applications could be much quicker and straightforward, but in reality, it's taking 12 months or more to have them finalized.

In terms of the two-year conditional permanent residence currently in place, it is unfair and forces people to remain in relationships where they are vulnerable and at the mercy of an abusive sponsor.

We are familiar with some of the exceptions under this policy; however, if there is emotional or psychological abuse, many applicants tend to remain in the relationship for fear of their PR being revoked. We have encountered clients who are too afraid to call and make a report to the police. Police involvement can be a very traumatic experience, and if children are involved, there is the added fear that the Children's Aid Society will be called in.

Another issue is that submitting a sponsorship request does not confer any status in Canada. This forces people to keep renewing either their visitor visas or student permits, spending more money on fees, and applicants who are out of legal status can be deported at any time and have their applications cancelled.

It should be considered that, once a sponsorship has been submitted, all applicants should be given implied status. They should not be living under the constant threat of being separated from their spouse or partner.

Open work permits are another issue. They are being issued within three to four months after application submission, which is great. However, they are only issued to people who have legal status in the country.

It is a well-known fact that many employers hire people with no status, but there are no protections afforded to these people. IRCC should consider that, given the reality, all should be given the opportunity to work legally and contribute to the Canadian economy without any fear of being caught by border services during the processing of their application, regardless of their current status.

Another complaint from our clients is with respect to the call centre. Our experience is also that the IRCC call centre seems unable to provide consistent and accurate information. It is common to get different answers to the same question from different call centre staff.

The online status verification is also ineffective. Information is not updated on a regular basis, and it is difficult for clients to update any personal information. Emails are usually sent via webmail, but confirmation that the information was received is often not sent to the client.

● (1550)

In terms of the actual immigration forms, some of the validated forms are regularly updated and changed by IRCC. This causes applications that were submitted four months prior to be returned to the sponsor for resubmission on updated forms. These can be lost in the process because they are sent to clients by regular mail, and fail to reach them. This can be very problematic because some of the documents, especially criminal records, have to be re-requested from the country of origin and translated again, at significant cost, and new original supporting documents have to be resubmitted as well. If information needs to be updated, the request should be sent in an email or letter requesting the specific form rather than returning the full package.

Fee payment is another obstacle for clients. Payment can only be done online with a credit card, and not everybody has credit cards and having to ask someone to borrow their credit card is not always an option.

Emails are sometimes sent requesting additional information of clients but some clients never receive the requests, due to incorrect email addresses, etc. This results in the cancellation of the application. Some of these may have been in process for two years or more.

We would like to put some recommendations on the table.

Members of Parliament play a very important role in the immigration process and it should be part of their role to facilitate communication exchange between clients and IRCC. We do refer some clients to their local MPs, and with their involvement they were often able to have a positive impact in the application processing times.

Overseas visa offices should be working closely together with the processing centre in Canada. They could, for example, start the background checks on the application while reviewing or completing the sponsor eligibility stage. This would reduce wait times.

Additional processing offices should be set up, such as the one in Ottawa. Applications being processed in the Ottawa office are being finalized in four to five months compared to 10 to 14 months overseas.

The two-year conditional permanent residence should be eliminated. If there is a report of marriage fraud then IRCC should start an investigation by interviewing both parties involved in order to reach a fair decision.

Emails requesting additional information should be followed by a written letter in order to ensure the client receives it. What is at stake is too important to leave to vulnerable email accounts.

There should better communication between border services and IRCC, and they should expedite the processing of applications under deportation orders.

The government, in our opinion, should also consider allowing the sponsorship of siblings.

Finally, multiple options for the payment of processing fees should be available.

Thank you.

The Vice-Chair (Ms. Jenny Kwan): Thank you very much, Ms. Nunes. We will now go to questions on a rotational basis.

Mr. Tabbara, you have seven minutes.

Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.): Thank you, Chair.

Thank you, all of you, for being here today with us and for helping us conduct our study on family reunification. I want to take a moment to thank you again for all the work that you do. I am pretty sure myself and my colleagues want to thank you for all the work that you do in helping bring families together.

My first question will be to Ms. Wells. I am reading here from an article that says that a former caregiver's fight to bring family to Canada is dragging into its 17th year. It's regarding her children she was trying to sponsor from the Philippines. Would you say that maintaining a lock-in date would be essential for families?

Ms. Patricia Wells: Yes, that's another of the things that this caregiver, Marcellina, lost when her case became a humanitarian case instead of a live-in caregiver case. If there is concurrent processing of overseas dependants, the children overseas are locked in at the age that they have. If they're 10 years old when their application starts, they will forever be considered dependants, even if 10 years go by and suddenly they're 20 years old. As long as they were the age of dependants when they started, they will be locked in at that age.

Having the same lock-in date possibility for the overseas dependants of H and C applicants would definitely go a long way towards curing what happened to Marcellina in this case.

● (1555)

Mr. Marwan Tabbara: Would you say that a lock-in date is required for children overseas of people who are accepted on humanitarian and compassionate grounds, who submit a family-class sponsorship?

Ms. Patricia Wells: Yes, I think that would be easy to do, even by way of policy or ministerial instructions. As far as I know, it's something that was dealt with very quickly and expeditiously. When they changed the date of the age of dependency two years ago, they did have transition provisions that locked in dates at that time. I think it should be very easy to do that, and it should be done definitely. Anybody who has overseas dependants who may face delays, and therefore age out and get too old to be sponsored, should have the benefit of that provision.

Mr. Marwan Tabbara: As far as I'm aware, the lock-in date was brought in August 2014. Do you think the lock-in date should also apply to cases prior to August 2014?

Ms. Patricia Wells: It is, as I understand it, retroactive in that sense. For instance, in the case of live-in caregivers—and perhaps someone can correct me if I'm wrong—the age of the child was locked in at the date when the live-in caregiver first applied for a work permit to come to Canada. If they were dependants at that time, then they would forever be dependants. In that sense, it is retroactive, and I think that it can be easily managed by instructions or a simple change in the policy.

Mr. Marwan Tabbara: Thank you.

My next question is for Ms. Liew. In your submission, you noted five general reasons why applicants do not disclose their family members, and that most of these reasons have nothing to do with fraud. Can you provide more examples?

Ms. Jamie Liew: Yes, I provided five different categories.

For example, under the category of “misunderstanding”, an applicant thought that children who were not in her custody didn't need to be listed, when that is obviously not the case.

The second category is “failure to update an application”. For example, an applicant informed immigration that she had a child after she had submitted her application, and this child was barred for the rest of this sponsor's lifetime from being sponsored.

“Fear of exposure” is the third category. A number of examples can be brought to light here. An applicant feared telling her second husband about children from her first marriage, and therefore she did not include them in her application when she was coming over with her husband. Second, some people don't want to reveal the existence of children, for example, from extramarital relationships for fear that the interpreter or the consular office officials in their local community could share confidential information, or a person fears the reveal of a child as a result of rape.

The second last category is “lack of knowledge or bad advice”. This is obviously bad advice given by a person in a community or by a lawyer.

The last one is “unaware a child was existing at the time”. One tragic story is that a woman came and didn't know that her children were still alive. The International Red Cross had identified them, and they notified her that they had found her children after some time, but our immigration rules still prevented her from being reunited with her children.

Mr. Marwan Tabbara: As you mentioned, these cases are just misinterpretations, or they forgot to fill out a single form or an area on their application sheet.

Can regulation 117(9)(d) be fixed, or must it, in your opinion, be completely repealed?

Ms. Jamie Liew: I think there is a simple way to deal with this. It's a very harsh tool that's being used right now. This is in our research, and I provided in my written submissions links to two research papers that I, along with some others, have written. It's very clear that the problem of fraud is not needed. There are other tools in our immigration system that deal with this problem in a more fair and balanced way. As I said, 90% of cases deal with non-fraudulent reasons. There are innocent mistakes, misunderstandings, and language and cultural factors that play into why these persons might not have been identified in the first place, and it has nothing to do with fraud.

There's no breathing room or mechanism to allow for an immigration official who is reviewing a family reunification sponsorship application to consider these things or to provide any leeway in deciding otherwise. This provision applies automatically, and it's very harsh. I think the only way to remedy this is to get rid of that provision.

● (1600)

Mr. Marwan Tabbara: Thank you.

The Vice-Chair (Ms. Jenny Kwan): Thank you very much.

We'll now move to Mr. Saroya, for seven minutes.

Mr. Bob Saroya (Markham—Unionville, CPC): Thank you to all the witnesses for coming in and giving us your point of view. It is a difficult file.

Ms. Liew, I'm having a hard time listening to what you're saying. Somebody has kids. Then she tells them she had kids. She didn't tell her husband she had kids. What will happen when, three or four years down the road, she tells him that she has two kids, and one kid's in the back.

Please explain further on it. Maybe I misunderstood. Where are we coming from?

Ms. Jamie Liew: Basically, the typical way that this could happen is if, for whatever reason, they don't list, for example, a child on their application form, regardless of the kind of immigration stream or category that the person is coming under. It could be for some of the reasons that I spoke about earlier. Then, years later, or some time passes, and they're eligible to become a sponsor, and they want to bring that child over.

The regulation 117(9)(d) applies automatically. If you try to sponsor that person, immigration officials will go back and look at the immigration forms. They will look at the file to see if immigration officials examined that person, the child. If they weren't examined, if they weren't disclosed, then the provision applies automatically.

It prevents you from bringing that family member forever. There's no recourse other than maybe putting in an H and C application, but, as I've said, it is an uneven remedy. Not everybody gets relief through that, and it's expensive. It leads to lengthy delays. It's expensive for the immigration system, for the government.

There isn't a reason to allow such a strict application of this rule. If you're concerned about fraud, there are other mechanisms in the immigration system that deal with this already. There are processes by which to examine whether or not fraud has occurred in this case.

In a lot of cases, we're talking about genuine family members. These are not people who are not bona fide family members of the sponsors. I think this regulation shouldn't exist. It is overbroad and applies harshly to people who are already contributing members of our society.

Mr. Bob Saroya: How often do you see this situation?

Ms. Jamie Liew: It's hard to say. In our study, we noted that there were a number of cases where people failed to even pursue alternate remedies or H and C remedies, for example. This is because they feared that they could receive punishment or repercussions as a result of losing their status for being perceived as lying to the immigration system.

It's hard to say how many people this affects. When some people are advised by legal counsel that they're going to have a hard time sponsoring the family member because they're caught under this provision, they might say, “Well, I'm not going to take any chances. I want to keep my status in Canada, and I don't want to lose it on this basis.”

It's unknown, but it does affect quite a number of people.

Mr. Bob Saroya: In your opinion, what are the greatest barriers to family reunification through Canada's immigration program? What are the main barriers? What information can we collect?

The idea is to listen to you, collect the information, write the report. What are the barriers? Anybody can take this one.

Ms. Jamie Liew: I'll just add two other things. Other than 117(9)(d), the two other issues that I didn't have time to talk about are the definition of biological child and the use of DNA to test this. There needs to be a greater understanding, given technology and our understanding of families today. We need to relook at the definition of a biological child.

The other thing is that it is my that understanding that IRCC has scaled back on the kind of data it's providing on the processing of family reunification or sponsorship applications, especially regional information. There should be a greater access to this kind of information so that persons working in the field can assess the disparities and any issues that need to be taken up.

● (1605)

Mr. Bob Saroya: Most of you talk about sponsorship and that two years' residency should be removed. How many cases do we see or do we hear?

Ms. Lobat Sadrehashemi: I don't have the exact number, but I can tell you that I frequently have women in my office who are in this situation, where they have to make this decision about whether or not....

Even though there is an exception for violence, it's ineffective because they still have to apply for the exceptions. They would have to notify an immigration official that they are leaving the relationship and are applying for the exception. Many would rather, as one person said, do their time in the abusive relationship and not risk losing their status.

Mr. Bob Saroya: Does anybody else want to add anything?

Ms. Anabela Nunes: I believe they need the police records when a person informs the IRCC. I don't think a letter from a social worker or a family member is sufficient for them, so yes, there is that added stress. Many of them don't have police records. As I mentioned before, they don't want to get the police involved. It is a very unfair policy.

Ms. Patricia Wells: I would just echo that. It's very unfair, and in a way quite unsavoury, in that it seems to put a spouse's immigration status in Canada in the hands of her or his Canadian spouse, which I don't think sends a great message. I've spent years trying to tell new immigrants, especially women, that it's not like it is back home, that their husbands can't get them deported, and that they have rights in Canada as women. With this provision, it seems as if we are right back in the days, when I have to tell them, “No, your husband could actually get you deported. It's not up to you; you don't have status unless he says you do.”

The Vice-Chair (Ms. Jenny Kwan): Thank you very much.

The rotation now comes to me for seven minutes, and then to Mr. Ehsassi for seven minutes. I am starting the clock.

I'd like to thank all the witnesses for their presentations. You have all raised very important points.

I'll just follow up with respect to paragraph 117(9)(d). Am I assuming correctly that the call is for the government to repeal this section of the act? Ms. Liew, go ahead.

Ms. Jamie Liew: Yes, exactly. In my mind, this is the only way to remedy the problem of 117(9)(d). Effectively, it is an exclusion provision, and it automatically applies, regardless of the reason and regardless of whether the family member is a genuine family member, which I think is behind the premise of why this was put in place to begin with. If we are talking about a provision that is supposed to be effectively carrying out the government's objective of protecting the integrity of the immigration system and ensuring that only genuine family members are coming into our system, it's failing completely, because it is barring people for a lifetime from bringing their family members over. The only remedy, I think, is to get rid of it completely.

The Vice-Chair (Ms. Jenny Kwan): Thank you very much.

My next question is for Ms. Wells and Ms. Sadrehashemi.

Both of you raised the issue of the live-in care workers, and particularly the delays in processing family reunification. I often have this question in my own mind. If they are good enough to work here, are they good enough to stay? Why are they temporary foreign workers, really, to begin with? I wonder whether you can comment on that.

In the interim, until perhaps the policies change, what can we do? A special measure was talked about. What should that special measure look like?

Ms. Wells, go ahead.

Ms. Patricia Wells: It's a very good question. Why are they temporary foreign workers, when the whole program is geared toward giving them permanent residence? A very salutary change that happened several years ago was trying to take away the uncertainty of the temporary work aspect. The whole program is geared to working, and once you work, you automatically get permanent residence.

I actually haven't given any thought to how a program that doesn't call them temporary foreign workers might look, so I defer to my colleague.

● (1610)

The Vice-Chair (Ms. Jenny Kwan): Just bring them into the immigration stream....

Ms. Patricia Wells: In a way, they have. They have made some amendments now, as of two years ago, to bring them into a permanent resident stream, with serious—

The Vice-Chair (Ms. Jenny Kwan): In that instance, they have to wait two years before they bring in their families, before they submit the application. I am suggesting, why not just bring them in as permanent residents right from the get-go, instead of making them wait two years?

Ms. Patricia Wells: I would leave that to the committee to decide, but I don't see anything wrong with that. I can't see any downside to it. It would serve the needs of these immigrants, mostly women, coming in. It's one of the few programs that were, at least at one time, open to them.

The Vice-Chair (Ms. Jenny Kwan): Thank you.

Ms. Lobat Sadrehashemi: I agree. I think that, if we value them as workers, we should make sure they are actually able to be permanent residents of Canada. Even if you look at other programs, such as the Canadian experience class—which does require one year of work, so it's very similar—you'll see that their applications for permanent residence are processed in six months. That's the average processing time. Because they are allowed to bring their spouses on accompanied work permits, they are not separated from their families, whereas live-in caregivers are separated from their families while they are doing their work requirement, and then on top of that, their processing takes eight times longer, and during that time they are not with their families.

The Vice-Chair (Ms. Jenny Kwan): In the meantime, perhaps until large policies change, in terms of a special measure, what would you say needs to be done?

Ms. Lobat Sadrehashemi: There has to be targeted effort at reducing the backlog. The 51 months is just totally unacceptable.

That's why I was quite surprised to hear that, even though we're looking at reducing the backlog, the only main focus is on the nuclear family sponsorship, when for live-in caregivers the wait is 51 months, four and a half years. That's not going to go away unless there are special targeted efforts made to reduce it.

The Vice-Chair (Ms. Jenny Kwan): The processing takes such a long time that there are times when people's medical tests have already expired, and then they have to go through them again, which is onerous and expensive and, of course, sometimes the health condition of people changes as well. There are situations where children, particularly if they have some sort of disability, could also become a “hindrance”—and I use the word hindrance in quotes—for the family's application in that process. So much of that is dependent on how well you can make the arguments.

I wonder if you can shed some light on that because I've come across families who have run into this huge challenge, and they cannot reunite with their families through the live-in caregiver program.

Ms. Lobat Sadrehashemi: If you think of the length of the separation, you're looking at at least six years and likely more, so lots of things happen to families in that time. Children grow up, and they could have other medical issues arise, definitely.

The Vice-Chair (Ms. Jenny Kwan): Thank you.

In terms of the conditional requirements for spousal sponsorship, the issue around abuse is ever real for people in those situations. In terms of a remedy with respect to that, can you share with us what the committee should be recommending to the government in addressing that issue specifically?

Ms. Sadrehashemi.

Ms. Lobat Sadrehashemi: First, the regulations have to be amended to get rid of it completely, nothing short of that, and it has to be retroactive so that women don't have to constantly live in that fear.

Also, as I've said, there have to be measures taken right now while we're waiting for the regulations because of the high risk of this provision that's been in place for four years. That's why I say that right now the thing you could do is, if we're going to get rid of it—and we've said that we're getting rid of it—then every day when people come in, and we tell them they're conditional permanent residents, we should also be telling them that we're not going to be enforcing this condition against them.

We should also have an operation bulletin that says clearly there are not going to be investigations of these breaches.

● (1615)

The Vice-Chair (Ms. Jenny Kwan): On siblings, regarding the definition, I'm asking the question to Ms. Nunes.

Oh, I'm sorry, the seven minutes are up. Maybe someone else will ask that question.

Mr. Ehsassi, you have seven minutes.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you.

I also want to thank all the witnesses. The topics that have come up today have been incredibly helpful.

I will start off my questioning with Ms. Sadrehashemi.

You have pointed out that for sponsorship there are long waiting times and that we do have a need for a targeted effort. I've heard the Minister of Immigration speak to that issue on numerous occasions, how that happens to be one of his priorities. I wonder whether you as a practising lawyer have seen any discernible change in wait times over the course of the past year.

Ms. Lobat Sadrehashemi: Yes, I have. In terms of spousal sponsorships, it is faster.

But the point I was making was about the category of caregivers. That has not gotten faster.

Mr. Ali Ehsassi: So there has been no change in that specific category?

Ms. Lobat Sadrehashemi: No.

Mr. Ali Ehsassi: Okay.

The second question follows up on my colleague Ms. Kwan's question.

With respect to the terrible plight of people who are being abused, I wonder if there is a distinction, or if there should be a distinction, between reports by police officers and social workers, or is that something you think is not a problem?

Ms. Lobat Sadrehashemi: I mean, if you look at the way the exception is written, it's very broad, and the guidelines that have been issued talk about a lot of different kinds of evidence as acceptable. That's not the issue.

The issue is, no matter what you do, no matter how you change that guideline, you still have to tell a woman who comes into your office, “You're going to have to apply and ask somebody to decide whether or not you meet the exception”, so that's the decision. Even if a reasonable person would say, “Of course you fit this exception”, they still have to report themselves and they are, then, at risk of possibly losing their status. A lot of women will not make that choice. On top of that, you have people who just don't even know that there is an exception, and have only heard that they have to stay and can't leave for two years.

It just causes, for what...? There is no evidence that it actually curbs marriage fraud, and we have other tools to deal with it.

Mr. Ali Ehsassi: Okay, thank you for that.

Ms. Nunes, you pointed out that the paperwork that people have to go through for the purposes of family sponsorship could be incredibly onerous and time consuming. Having had practical experience with the paperwork that has to be dealt with, did you have any specific recommendations as to what we could do without?

Ms. Anabela Nunes: There are currently seven or eight different forms. Yes, some of them are very straightforward, but others, for example, the generic form, the sponsor form, I can't remember the exact number of that form, but that requires someone to have access to computers. Not everybody has computer skills. Not everybody who comes to our office speaks English because they might have been here for a short time. And those forms are very repetitive. Those two specific forms have to be validated and that will create a bar code, and that's the problem we are seeing at our centre. We've submitted applications four or five months ago and they update the forms and they return the entire package. It is very frustrating for the client because this is a waiting game. They are anxiously waiting for a positive decision and when it comes back to them, it is devastating.

There is, for example, the background application that specifically asks for information regarding work history and addresses since the age of 18. I've had applications returned sometimes seven, eight months after because there was a gap of one month that was not accounted for. Someone who has never done a sponsorship application wouldn't know that. Maybe they could simplify the forms, have shorter forms, I don't know. But it is very time-consuming.

● (1620)

Mr. Ali Ehsassi: Okay, thank you.

I have some time remaining, and I'd be remiss, Ms. Nunes, if I didn't ask you about this program I understand is referred to as the HIPPY program, which engages parents and grandparents in the educational opportunities provided to children. I was wondering, just out of curiosity, did you find that this benefits the parents just as much as it does the children in understanding how things work in this country? Could you explain that?

Ms. Anabela Nunes: I'm afraid I know very little about the program. I apologize. We do have a specific team of workers who work just with that program. I know they are very successful. They have a lot of families currently registered and they have assisted many children, but I wouldn't know any specifics on it. I'm sorry.

Mr. Ali Ehsassi: That's no problem. Thank you.

Ms. Liew, one of the questions we are asking people is whether in your experience sponsored parents or grandparents make unique contributions to the development of children. I was wondering if you could share your experiences with us.

Ms. Jamie Liew: Yes, I definitely think they do make a huge contribution to Canadian culture and society. One of the misconceptions is that they are a drain on our system, but I think that's ignoring the contributions they make within families either through child care or through supporting families as they integrate into Canadian society.

The other thing is that I think there needs to be a greater recognition that family units may be understood differently in different cultures, especially in Asian cultures, a culture that I'm familiar with. Parents and grandparents often live with or are in very close proximity to the family units where children live and contribute in various ways, and this needs to be recognized.

The other thing I think that's often forgotten is that these people have investments, their own economic history, and they will bring it with them to Canada. If you allow these people to come to Canada, often they're not just elderly, ill people, they are also people who can further contribute to Canadian society through their investments, their spending, innovative ways they could generate activity socially, culturally, or economically. There's a lot of misunderstanding with regard to parents and grandparents and what they could contribute to our society.

The Chair (Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.)): Thank you.

Mr. Saroya, you have five minutes, please.

Mr. Bob Saroya: Thank you, Mr. Chair.

Thanks again to all the witnesses who have come forward.

All of you have talked about the criteria for sponsors, and that the age of 18 years should 22 years or 24 years or whatever number. What is your opinion about what the age should be? What would the implications be, if we moved the age from 18 to 24? If the age goes from 18 years to 24 years old, we bring in so many families a year—let's say 18,000 family members a year—that when we raise the age we will be leaving some families behind. What is your opinion?

Ms. Patricia Wells: I'm not sure I understand your question. Is it that there would be fewer people coming?

Mr. Bob Saroya: In 2016 we will be bringing 80,000 family class immigrants, of whom 20,000 are to be parents and grandparents. When we move the class up for the other extra children to come in this situation, it will affect the other family members who will not make it to the.... What is your idea? What do you think?

Ms. Patricia Wells: In order to bring more in one class, it would have to cut out more...?

The problem with having an unreasonably low age of dependency, such as 18, is that Canada is losing out on some families. In my own experience in my practice, I have seen this. Once they hear a family—say they are skilled workers and they may have been working here for a while and their children are going to university in Canada, for instance, and making their home in Canada.... When I tell people that when they apply for permanent residence they will have to choose whether to stay in Canada without their older children or go back home, I have had clients who have decided that they can't split up the family and will simply choose some other country where they can remain together as a family.

I don't have any hard statistics on this, of course, but I think what Canada is losing by not allowing entire families to immigrate should be taken into account in the study you are doing .

● (1625)

Mr. Bob Saroya: Does anybody else have any comment?

Ms. Jamie Liew: I could give a personal account. I represented a client once during the time when the age was going to be lowered to under 19, and we were frantically putting together her application for that, because her son simply fell into this arbitrary number of “over 19”. It neglects to consider the situation of families with children who are still undergoing post-secondary education, who are contributing to the family in a different way. It's still a young enough age that they still have huge potential to contribute to Canadian society. It's short-sighted to think that the cutoff at 19 is appropriate. It seems arbitrary, in essence, given the age group of people who are attending post-secondary education.

Mr. Bob Saroya: A sponsor must show that he or she has the income to support the sponsored family members, and this proof must come from tax returns from Canada Revenue Agency.

What is your opinion on this, if people can show that they can afford those family members coming to the country?

Ms. Patricia Wells: The only time this comes into play is if they are sponsoring parents or grandparents. I believe someone in the next session may be speaking about that.

Mr. Bob Saroya: Does this cause any difficulties?

Ms. Patricia Wells: It's been very onerous; I think all of us have found that. It's a very much increased level of support that you need in order to provide for parents and grandparents than that, for instance, needed to support other family members. It's the low-income cutoff plus 30%. The fact that people have to show that income in one specific way—as you say, just from their CRA notices of assessment, basically—and that it has to be for three years automatically means that there's going to be a delay in that family's reunification, because the person will have to wait at least three years in order to show that proof and be able to start sponsoring their parent or grandparent. That process is now taking about two years, so there are six years of non-family reunification.

The Chair: Thank you.

Ms. Zahid, you may take five minutes, please.

Mrs. Salma Zahid (Scarborough Centre, Lib.): Thank you, Mr. Chair. I want to take this opportunity to thank all our witnesses for providing their very important input into our study.

My first question is for Ms. Sadrehashemi. One issue I have heard a lot from my constituents in the riding of Scarborough Centre is that often IRCC officials tasked with determining whether or not a marriage is valid may not be sensitive to certain cultural practices that could make a relationship appear unusual by western standards. Women, in particular, often feel very nervous in these interviews and can make innocent mistakes in their answers that can unfairly prejudice their application. Could you discuss any experiences you and your clients have experienced in this area, and do you have any recommendations on how these necessary evaluations can be made more culturally sensitive?

Ms. Lobat Sadrehashemi: Yes, that's a great question. Definitely, that is a problem, because the officer is tasked with figuring out the genuineness of the relationship, but all these relationships are happening in all sorts of different cultures of which the officer likely doesn't have a real understanding.

A lot of the types of questions that are asked are very intrusive, and a lot of women I've spoken to feel very uncomfortable discussing with a male officer sexual questions about their relationship. That is just one example, but there are all sorts of examples of the problems, and sometimes there isn't corresponding thoughtfulness about how much weight should be given to the answers that are given in these types of interviews when looking at the application overall.

Mrs. Salma Zahid: What would you recommend? What can we do to overcome that issue?

Ms. Lobat Sadrehashemi: Solely relying on "He said this and you said that" in this particular interview is problematic. Look at all the evidence before you on a sponsorship application and don't put so much weight on the interviews.

● (1630)

Mrs. Salma Zahid: Ms. Wells.

Ms. Patricia Wells: Probably more training of immigration officers would help. I get the feeling from immigration officers that they don't feel comfortable asking these questions. They don't really know how to judge the genuineness of a marriage in a lot of cases.

One simple fix that might eliminate the volume of the work is if the regulations or policy could be changed to where, if a marriage is clearly genuine, they not even engage in that kind of inquiry. For instance, just speaking arbitrarily, if the couple has been married for more than five years, if they've had children together, I don't know why it would even be necessary to embark on that.

It's a little off your topic, but I would go even further. In those situations where, for instance, there's a Canadian citizen sponsoring a spouse from overseas where the children are Canadian children by descent, if they want to reunite the family in Canada why even have a sponsorship of that non-Canadian spouse? I think that might free up some time. I don't have the stats on how many that would apply to, but it would certainly eliminate a lot of the angst for those families. The whole family can come to Canada as a right except the spouse who has to be sponsored.

Mrs. Salma Zahid: My next question is for Ms. Nunes. Your clients are largely immigrant women. As we have heard, they face their own unique challenges when it comes to integration in a new home and a new society. Based on your experiences, could you discuss the value on women's and mothers' experiences, especially their being able to reunite their families in Canada, in terms of emotional and material support and allowing for a more successful integration into the Canadian system?

Ms. Anabela Nunes: Sorry, what is the question? Can you rephrase it, please?

Mrs. Salma Zahid: For women, and especially mothers reuniting their families, do you think that impacts on their emotional and material support in allowing them to successfully integrate into the Canadian system?

The Chair: Ten seconds, please.

Ms. Anabela Nunes: I'm not sure if you're referring to if they want to sponsor their parents, for example. Of course, that would help with their integration into Canadian society, because usually parents and grandparents tend to help with the raising of their children. They help in times of health crises as well and with the overall emotional support for the family. So I think it should be a priority.

The Chair: Thank you.

I'd like to thank the witnesses who have appeared before our first panel today.

I will now suspend for a couple of minutes to allow the second group of witnesses to appear.

Thank you.

● (1630)

(Pause)

● (1640)

The Chair: The second part of our meeting will commence.

We're having some technical issues with the video conference section. Our specialist is still working on that. But looking at the time, I believe we should begin. The audio, I understand, is working. So we won't have the video part, but at least we'll have the audio part.

In the second panel we have with us the staff lawyer for Parkdale Community Legal Services, Ms. Toni Schweitzer.

Welcome.

And invisible to us, but I believe they can hear us, from the Canadian Association of Professional Immigration Consultants we have Deepak Kohli, vice-president, and Vilma Filici, representative.

Welcome to all.

And those by audio conference, at this point can you just acknowledge that you can hear us.

We don't in fact have audio connection, as yet, either, but as it's almost a quarter to, perhaps we can begin with the presentation from Ms. Schweitzer.

Seven minutes, please.

Ms. Toni Schweitzer (Staff Lawyer, Parkdale Community Legal Services): Thank you for inviting me.

I'm going to talk about three issues, two very briefly and the main one I'll save for the end.

I just wanted to very quickly pick up on something that the previous witnesses spoke about. They spoke about live-in caregivers. I want to add my voice to the concern about live-in caregivers, but add in one other area of concern. That has to do with the family members of protected persons. The reason I want to talk about both of those, or just make a comment about them, is that I know that the purpose of these meetings is for a study in relation to family sponsorship. Technically, live-in caregivers and the families of protected persons don't come to Canada under sponsorships, but it's still family reunification. I hope you will consider those types of cases as well and be specifically looking at processing times. You heard a lot about live-in caregivers and the amount of time it's taking for them to reunify with their families. The same exists for the families of protected persons.

The reason they're not family sponsorships is that there's a special way that both those categories of applicant are able to bring their families here. It's what's loosely called concurrent processing. The purpose of that was, in fact, to make it faster; you didn't have to wait until you were a permanent resident or a citizen yourself; you could apply for your family at the same time that you're applying for yourself. The problem is that it's nowhere near that fast. The families of refugees who have been found to meet the definition of a convention refugee or protected person in Canada can be waiting a very long time to get here. I would just like to say that, in relation to looking at processing times, in addition to live-in caregivers, please look at what are called DR2s or the family members of protected persons.

The second thing I want to mention, very quickly—and again it was touched on a little bit this morning, and I know you've had other people talk about it in previous meetings—has to do with the excessive-demand provision that says that a person can be refused on an application to immigrate to Canada because he or she is likely to use up too many health care dollars, basically. I know that when the minister was here, or his officials—I think it was the assistant deputy minister, Mr. Orr—he said that there is going to be a fundamental review of that provision. I just would like to say that, in the meantime, there are families who are being devastated by this; they are being refused on the basis that they have a disabled child. Although I understand that review may take some time, there are interim measures that could be taken, such as giving instructions to counsel, to your government counsel, that these cases should be consented to.

As you probably all know, there is the case of the professor from York University, Mr. Montoya. He was in that situation. His case was settled. He and his family will be able to immigrate permanently to Canada. I'm happy; that's the right decision for him. However it's not just him. He would totally agree with that. He never wanted an individual solution. I would just put out there that, in the meantime, while this whole issue is being looked at, there are interim measures that could be taken that would stop the devastation that's happening to families.

Now I want to move on to the main issue I want to talk about, and that has to do with something that's directly relevant to what you're looking at in terms of family sponsorship: what the test is for a genuine marriage. I know there was some discussion a little bit with the previous panel about this. I want to talk about the existing test that's set out in regulation 4. I don't know if anybody has spoken about it already, but the way it works now is that, obviously, if you are a Canadian citizen or permanent resident and you're married, you're allowed to bring your spouse, except if it is determined that the marriage was in bad faith. The definition of a bad-faith relationship is set out in regulation 4. There are two tests. The first one is whether the marriage was entered into primarily for the purpose of acquiring a benefit or privilege under the act. The second one is whether the marriage is genuine. Between those two clauses now is the disjunctive “or”. What that means is that, if it is found that your situation meets one of those, you're out. Your spouse can't come to Canada.

● (1645)

It used to be the case, prior to 2010, that it was an “and”. You had to show both before a marriage could be found not to be genuine. My submission to you is that you need to amend the regulations back to the way they were prior to 2010, and I'm going to tell you why I think that's the case.

What happens now, obviously as I said, is if a marriage is found to meet either of those two prongs of the test the spouse will be refused. The first one, which is the primarily for the purposes clause, is understood to mean what was the intent of the parties at the time of the marriage, what was their motivation for getting married. The second one is the genuineness. They look at all kinds of factors and that's usually assessed at the time either that the application is assessed by the visa post or if it's refused and then it goes to the immigration appeal division at that time. So there are two different time periods that are being looked at, the time of the marriage and time of assessment.

The problem is that if a decision is made for whatever reason—perhaps with some legitimacy even—that immigration was a factor in the timing of the marriage so it was part of the intent of getting married, that is a decision that cannot be overcome because it is a past-tense assessment of what was the intention of the parties at the time.

There are cases, and in preparation for coming here I was doing some quick law research—

● (1650)

The Chair: Twenty seconds, please.

Ms. Toni Schweitzer: There are numerous cases where the immigration appeal division and the Federal Court have said, this is definitely a genuine marriage, no question, there are even children, but a finding was made that the intent was primarily for the purposes, and the marriage was refused.

The Chair: Thank you.

We've had a request to suspend briefly to work out some of the technical difficulties.

● (1650)

(Pause)

● (1650)

The Chair: Unfortunately, we haven't been able to work out the technical difficulties and we'll have to reschedule the panellists from the Canadian Association of Professional Immigration Consultants to appear at another time.

We will now continue with questions. First we have Ms. Zahid for seven minutes, please.

Mrs. Salma Zahid: Thank you, Chair.

Thanks a lot, Ms. Schweitzer, for providing your input. I think we will continue the discussion from where you left off regarding proving that the marriage is genuine. They have different criteria laid down and, in many cases the cultural sensitivities are not looked into by the people who are there to interview the spouses. That's what I hear a lot from my constituents. Just to give some examples, they ask for telephone bills. In this era of new technology people don't have home phones, they call through WhatsApp.

So what are your suggestions in regard to where there are cultural differences and so that things are changing to keep pace with the new technologies?

Ms. Toni Schweitzer: First of all, there has to be an understanding of different cultures on the part of officers. I understand that one of the measures that's being looked at or even being implemented at this time in terms of speeding up processing is moving things around to other visa posts that are less busy. While I appreciate that is helpful, there's a potential downside there that officers need to know the cultures of the people they're interviewing. If it is sort of a random selection of cases going to whichever office is the least busy there is the potential problem that those officers are not familiar with the particular culture.

That being said, I agree with you that there are problems in relation to things like wanting to see evidence of phone bills or even sometimes expecting that a spouse will know very small details about a person's life—

● (1655)

Mrs. Salma Zahid: I will give you a simple example. Sorry for you cutting you off.

In some cultures, like coming from some interior villages in Pakistan and India, some women don't take the name of their spouse. They call their spouses by the names of their kids.

Ms. Toni Schweitzer: No, no, and I see that.

I was in court not that long ago on a case of a Tibetan couple where one of the issues was that she didn't know where he was on a brief trip to Mexico to teach some Buddhist prayer thing. I had an argument with the lawyer from the Department of Justice, which we continued outside the courtroom, where he said, “My wife went to Italy and I knew where she was every minute of the day.” If that's the kind of assessment that people are going to do, it's a problem because you cannot assume that in all cultures everything is done the same.

For sure, one of the underlying assumptions has to be that you cannot apply a western paradigm; and I think that comes with training, frankly, and an openness to understand that not every marriage looks the same. That again comes through training.

Mrs. Salma Zahid: Another area we are looking at is the parents and grandparents category. There certainly seems to be more demand in this category than could reasonably be fulfilled, but I am concerned about the process currently in place for the intake of those applications with people scrambling to get their application in during a very small window.

Could you discuss the experience you and your clients have had with this class from an application process perspective and share any recommendations for improving this process?

Ms. Toni Schweitzer: I have to tell you that actually none of our clients can do it because of the financial requirement. I work in a legal aid clinic, and our clients don't meet the low-income cutoff plus 30%, so I never do parent and grandparent applications.

That being said, I know that you have had some testimony about problems before at previous meetings. I am also familiar with problems from my conversations with other members of the immigration bar. It is a problem because there is a quota. You scramble to get your application in, and you have no idea where in the queue your application may end up.

I have no doubt there are problems there, but our clients don't ever have the opportunity to bring their parents and grandparents.

Mrs. Salma Zahid: Another issue that I have heard a lot about from my constituents in Scarborough Centre is problems with medicals. Due to the delays in the application processing, medical clearances expire, and they are asked to obtain a new medical. This is often not an insubstantial cost for those families with larger family sizes, and getting to an approved doctor can be a challenge as well.

Do you have any advice on how the process can be changed so multiple medical clearances are not required?

Ms. Toni Schweitzer: It's not only medicals. We see it all the time with medicals, police clearances, and with requests for passports or travel documents. They're routinely asked for up front, at the beginning of a process, when in reality they're not needed until much later, certainly not until, if it's a marriage, a genuine assessment has been done.

It's only then that they would move to second-stage processing to look at admissibility. I can't see a reason why they could not hold off asking for those things until they're actually needed. Then there's a greater chance that they will not expire before processing could be completed. I think that would be an easy way to deal with it.

The visa posts have generic letters they send out with big long lists of stuff that they want everybody to come up with, including a medical, a copy of travel documents or passports, and a police clearance. They don't need it up front. They could just ask for them when they need them.

Mrs. Salma Zahid: Your recommendation would be that medicals should be done after—

Ms. Toni Schweitzer: They could be done later in the process. Once an assessment is made that the marriage is genuine, they could then move on to second-stage processing.

Now, there may be cases where it is so obvious that the case should be approved that sending it all in at once might be a strategy, and certainly people could do that. But I don't know why the visa posts routinely ask for all of this stuff up front when these cases are taking eight months, a year, two years, or three years, and all of that is going to expire.

● (1700)

Mrs. Salma Zahid: And they go through a medical three times in some files. I've seen it.

Ms. Toni Schweitzer: It happens with our clients all the time.

The Chair: There are twenty seconds left, please.

Ms. Toni Schweitzer: We have a large Tibetan community. Those cases are complicated and take a long time. They do medicals multiple times.

The Chair: Thank you.

Mr. Saroya, you have seven minutes, please.

Mr. Bob Saroya: Thank you, Mr. Chair.

Thank you, Toni, for coming in. You're getting all the attention here today.

MPs from the GTA have big immigration issues. What do you see as the biggest? What I see in Markham is, what is a genuine marriage? Somebody came, and two days later, didn't like the situation, called the police, and moved on. In many cases, they already have somebody in mind.

What do you think? Where should the law stand on this sort of situation?

Ms. Toni Schweitzer: As I said, I think the law should be changed. The regulations should be changed back to what they were before when you had to show both that the marriage was entered into primarily for the purposes of acquiring a benefit and that the marriage is not genuine to refuse a marriage.

The reality is, in my opinion, and I think in the opinion of many immigration lawyers, that tools existed to deal with marriage fraud. The marriages that are fraudulent would be found to be not genuine, or if there is a case that slips through, that someone gets here and is subsequently found out, there are provisions, as well, for CBSA to conduct investigations as to whether or not there was misrepresentation in relation to that marriage.

The tools exist. What's happening now is genuine spouses, sometimes with children, are being permanently separated. I don't see what possible policy justification there is for that.

Mr. Bob Saroya: The other cases we hear about most of the time are situations when we sponsor the parents and grandparents, and the amount of money that is required to sponsor somebody is too high. They can't afford it. They can't do it for three years in a row. What is your opinion on that?

Ms. Toni Schweitzer: As I said, none of my clients can qualify. It is a problem. They are simply unable to bring their parents or grandparents. As you heard earlier from other witnesses, those parents and grandparents contribute. They make the family more economically viable, and my clients don't have that opportunity.

Mr. Bob Saroya: In 2016, we're expecting 80,000 family immigrants, of which 20,000 are parents and grandparents. In your opinion, is this 20,000 a good enough target, or should we change it?

Ms. Toni Schweitzer: I haven't thought deeply on this issue because it falls so outside the work that we do in my office and in other legal aid clinics. I certainly think that the original target of 5,000 was completely unacceptable. I believe the target is now 10,000. I think upping it to 20,000 would be a good idea.

I think the idea that parents and grandparents are simply a drain on our system is a complete misconception of the way families work. Allowing in the family that's going to help in looking after children and in doing a lot of the things that will free up the parents to work and contribute economically is very significant. I would say at least 20,000....

Mr. Bob Saroya: In your opinion, what are the greatest barriers to family reunification through Canada's immigration program?

Ms. Toni Schweitzer: How much time do you want to give me?

I think there are many. I think the current test for assessing a genuine marriage is a big problem. I think that the conditional permanent residence is a problem, although I know there is a commitment to do away with that. I think this committee should expand what it is looking at beyond sponsorships. You have been hearing about live-in caregivers. Those are not sponsorships, so maybe you are looking beyond a strict sponsorship. You should be looking at the families of protected persons or refugees as well. Those cases are taking an inordinately long period of time, and families are being destroyed in the process. I think there are problems with policy around parents and grandparents, which you've also heard about. I think there are problems with refusing families who have disabled children. I think that is an egregious problem and needs rectification.

● (1705)

Mr. Bob Saroya: I think it's all going to balance if we bring in about 300,000 immigrants a year in all the different classes. We bring in so many from each class, I think about 20,000 or 10,000. It's all about a balancing act.

What is your opinion on raising the age of dependent kids from 18 or 19 to 22 or 24? Any suggestions on what that should be?

Ms. Toni Schweitzer: I certainly think that under 19 is not appropriate. I would be in favour of raising it to 24 if that's on the table. I don't know if the government is considering that. Certainly, back to 22, absolutely. I see families in my office all the time who are devastated that their children, who in all ways are still dependent on them—and in some cultures an unmarried child will remain with their parents until they are married—are being told they can't come. This idea that children are independent at the age of 19 is simply not necessarily true in our culture. I don't know if you have a 19-year-old, but they're often not terribly independent. Certainly in other cultures the idea that at 19 your child is living an independent life is simply wrong.

For those families it is devastating, and it affects them beyond their emotional well-being.

The Chair: Twenty seconds.

Ms. Toni Schweitzer: It affects their ability to be functioning, contributing members of our society, too, if they're worried about their family back home. I would support raising it to 24.

The Chair: Thank you.

Ms. Kwan, you have seven minutes.

Ms. Jenny Kwan: Thank you very much for your presentation. I'd like to ask a question about overall immigration levels, because a lot of the challenges that we face around delays in processing and limitations with respect to processing are tied to immigration levels as well as resources in processing. Would you agree that the immigration levels need to be increased versus, then, what it is right now, which is about 300,000, 340,000 or so applications that are being processed?

Ms. Toni Schweitzer: I would agree.

Ms. Jenny Kwan: Some people have talked about a comment about a 1% of total overall population to be the targeted number, so that would bring us to about 400,000.

Ms. Toni Schweitzer: Again, I have not looked deeply at the issue of what the appropriate levels would be for immigration. I don't know that I could speak with any particular authority on the issue. I do agree that we could and should raise them. I think we are a country that needs immigrants, and I think that we, and you, have heard already from a number of people that the various categories of immigration....and it's not correct to say that some are an economic benefit and some are just about family reunification. It's much more complicated than that. When families are well and healthy and happy, they contribute more. I think that the economic well-being of the country is well served by healthy immigration even in the family category.

Ms. Jenny Kwan: In a previous panel there was some discussion about paragraph 117(9)(d), so this is related to people declaring children and then not declaring children. The suggestion was to repeal this paragraph...thought it was unfair for a whole variety of different reasons. I think you were here to hear that presentation, so I wonder whether or not you have some comments about that.

● (1710)

Ms. Toni Schweitzer: I would agree with what was said earlier today. The paragraph can operate very unfairly without any ability to assess why somebody may have not indicated a child on their forms, and it does operate then to permanently bar a sponsorship, and the only option is a humanitarian application, which is a discretionary decision, and therefore it is a very uncertain remedy.

Ms. Jenny Kwan: Thank you. Likewise on the issue that was raised around spousal sponsorship and particularly related to the two-year conditional aspect of it, I wonder whether or not you have some thoughts about that as well.

Ms. Toni Schweitzer: I would agree, again, with the earlier panel that it needs to be repealed, and I know the government has made a commitment to doing that. I think that's the right thing to do. I don't think there was a need to bring that provision in. It was brought in, it was part of a package, together with the issue that I was speaking about, the change in the test for a genuine marriage. They amended this regulation about genuine marriage. They brought in conditional and permanent residence. It was all part of the perceived epidemic of fraudulent marriages that were succeeding here in Canada.

I think that was a manufactured concern. I don't dispute there are some marriages of convenience that take place. I think the tools to catch them were there, and I also think that, if at the end of the day, the odd marriage that perhaps shouldn't have snuck through does, if that is the cost to make sure that genuine spouses are together, then that's what needs to done. Because as it stands right now, spouses in a marriage that the Federal Court has said is absolutely genuine are permanently barred from being reunited in Canada because a finding is made that at the time of the marriage, immigration was a motivating factor. And that's unfair.

Ms. Jenny Kwan: Thank you. I wonder whether or not in your practice you have had cases that have come in with refugees and folks who were trying to reunite with their families, but because of our definition of what's deemed to be family, which doesn't necessarily fit into their cultural expression of what's family, it has prevented them from being able to reunite with their family through the one-year "window of opportunity" programming.

I'm wondering whether or not you have had any experience with respect to that, and what your thoughts are about the definition of "family".

Ms. Toni Schweitzer: We see that all the time. We cover an area of Toronto, the Parkdale neighbourhood, that has a very large Tibetan community. We see a lot of cases where people have sort of de facto adopted children, in part because that's a cultural practice and in part because, as diasporas living in India and Nepal, they don't have access to legal adoptions, so it's not an option to do a formal legal adoption.

In cases like that, those kids are not dependants, strictly, under our definition of family and so, again, the only way in which you can bring those kids to Canada is if you are successful on a humanitarian application—again, that's a discretionary decision, it is uncertain, and the only requirement that an officer needs to meet, in terms of making that decision, is that it be reasonable.

In the end, what can happen is that children who have been taken care of, taken in at a young age and cared by the people they see as parents, can be refused because they don't meet our definition of family.

So, there needs to be an understanding that family is a much more complex term than the nuclear family that we think of.

Ms. Jenny Kwan: I'm just going to go back to live-in care workers. I think you began with some comments about that, with respect to the delay, which is horrific.

I'm wondering whether or not, with the TFW stream related to live-in care workers, they should not just be immigrants.

Ms. Toni Schweitzer: Absolutely, they could be. Unfortunately, that's not the way that caregivers have—

The Chair: You have 20 seconds.

Ms. Toni Schweitzer: —been able to come. Absolutely, they should be.

But if not, then certainly the program has to be much faster and more fair.

The Chair: Thank you

Mr. Tabbara, you have seven minutes, please.

Mr. Marwan Tabbara: Thank you, Mr. Chair.

I'll be sharing my time with Mr. Virani.

Thank you for being here, Ms. Schweitzer. We really appreciate all the information you've been providing this committee in our study on family reunification.

My first question is on immigration refugee protection regulation 117(9)(d), which states that people are not family members if they were not examined by a visa officer when the person sponsoring them immigrated to Canada. Since they are not considered a family member, they cannot be sponsored under the family class.

My question is, have you experienced any cases that fall under this category, and if so, could you provide us with some examples?

● (1715)

Ms. Toni Schweitzer: I have to say that in the immigrant communities I deal with, largely, in the work I do at Parkdale, we don't have a huge issue with regulation 117(9)(d).

I know there are many cases that are caught by it. The problem, as has already been discussed, is that those cases, then, are permanently barred from a sponsorship, and then it's only a humanitarian application, which is discretionary. As the earlier witnesses said, it's long, it's slow, and it's uncertain, and there may be very good explanations for why that child was left off the application.

So, I would agree with what was said earlier, that the solution is to do away with the provision.

Mr. Marwan Tabbara: Do you agree that, when certain individuals are filling out their applications, they're not understanding the consequences if they left something out—

Ms. Toni Schweitzer: Absolutely. Not only do they not necessarily understand, but they are, on occasion, getting bad advice too, from people who say, “If you're not planning on bringing them now, don't worry. Leave them off. You can deal with them later”. We hear stories like that all the time.

The other thing is—and this is going back to Ms. Kwan's question around definition of “family”—that we will see cases where people will indicate that they have children. For immigration purposes, that means your biological children or your legally adopted children. When we have a case of a child who is a de facto adopted child and he or she has been indicated on the forms as a child, that seemed to be an untruth. I have yet to run across a client who did that intentionally. It's that, in their view, in their eyes, this is their child. They don't know that when you write “child” on an immigration form, that means technically your biological child or legally adopted child. And so there are real problems around that.

Mr. Marwan Tabbara: Thank you.

I'll turn it over to my colleague.

Mr. Arif Virani (Parkdale—High Park, Lib.): Thank you for being here, Ms. Schweitzer. It's great to see you again. I prefer calling you Toni, but I want to be a bit more formal.

I want to say at the outset that the work you do at the Parkdale legal clinic is obviously well received and well respected. My understanding is that it was the first legal clinic in Toronto, if not in Ontario. For all of the work you're doing, I commend you and the clinic.

I want to ask you about two things that you raised, one right at the outset and one secondarily.

Your work in the Tibetan community is invaluable, and I thank you for it.

I'll ask both questions at once, because time is always short.

Perhaps you could touch on what you called “D-2s”, the concurrently processed individuals who are coming in under a refugee stream as protected persons. You indicated that it was meant to be concurrent to make it occur faster, and this has not actually been borne out by the facts.

Could you tell us a bit about how long it's actually taking, particularly for your Tibetan clients, as opposed to, if you have some comparison, how long it's taking for others who are generally in the family sponsorship category, and what you would suggest as a solution to rectify it? Is it to eliminate concurrent processing altogether and shift everything into family processing, or is it to enhance what is meant to be a quicker system currently?

I'll put the second question out there now. You talked about the visa posts abroad and the fact that they give you a grocery list of all of the things you require, showing what could be done incrementally or in stages. You might not need the medical up front; you could wait for it until after you've determined the marriage.

I presume you deal mostly with South Asian visa processing centres, but do you have any basis to inform the committee as to whether there are any visa offices that you know of, even anecdotally, anywhere in the world doing exactly what you say, and whether that's working better? I'd be curious to know about that.

Ms. Toni Schweitzer: I'll answer the second question first.

I don't know whether there are visa posts that are doing it differently. We work largely with clients whose families are in India and Nepal, so we're dealing with the Canadian high commission in New Delhi. Their practice, as I said, is to send out these form letters.

That being said, I recently—in fact, just earlier this week—received notification that one of our files had been moved from India to Hong Kong. I think it was about processing more quickly, moving things around. The problem is that the Hong Kong office sent out their generic letter, including the request for the household registration document, the *hukou*.

It's a Chinese document. Our client is in India. Obviously I know that, and I can tell our client, you don't need to get that. But there has to be some common sense used when moving files around. You can't just be sending out generic letters asking for a whole bunch of documents that don't apply to the particular clients. While I appreciate that this is an effort to speed up processing, there are some complications there.

I don't know whether there are visa posts that do it the way I've suggested, but I can't see why it wouldn't make sense and why it isn't possible. There's no reason to see a medical result or even a police clearance before determining whether this person is a member of the family class.

● (1720)

The Chair: There remain 20 seconds.

Ms. Toni Schweitzer: I now forget your first question. I'm sorry.

Mr. Arif Virani: It was about the Tibetan processing times and the concurrent processing, and how they compare—

Ms. Toni Schweitzer: I'm not sure I could give you an estimate off the top of my head.

It's true that we see the complicated cases. Maybe there are straightforward cases that move quickly, but we have cases in our office in which the person in Canada becomes a citizen before their family gets here.

The Chair: Thank you, Ms. Schweitzer, for appearing before our committee today.

We will now be moving in camera to deal with some committee business.

Once again, thank you so much for providing evidence to us.

[*Proceedings continue in camera*]