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# Standing Committee on Citizenship and Immigration

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EVIDENCE

**Monday, April 30, 2012**

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**Chair**

**Mr. David Tilson**



## Standing Committee on Citizenship and Immigration

Monday, April 30, 2012

• (1530)

[English]

**The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Ladies and gentlemen, this is the Standing Committee on Citizenship and Immigration, meeting number 33, Monday, April 30, 2012. This meeting is also televised. It's held pursuant to the order of reference of Monday, April 23, 2012, namely Bill C-31, an Act to Amend the Immigration and Refugee Protection Act and several other acts.

We have two guests today. For the first hour, we have Martin Collacott. He's with the Centre for Immigration Policy Reform.

You've been here before, many times. Welcome back, sir.

We also have Mr. Peter Showler, director of the refugee forum at the Human Rights Research and Education Centre, University of Ottawa.

Sirs, you have 10 minutes each.

Mr. Collacott, we'll start with you.

**Mr. Martin Collacott (Spokeperson, Centre for Immigration Policy Reform):** Thank you, Chairman. I will try to stick to my 10 minutes this time.

Canada has a long and impressive record of providing protection to refugees. In per capita terms we're among the world leaders with respect to how many refugees we resettle from overseas, as well as the number and percentage of asylum seekers to whom we grant refugee status and the range of benefits we provide.

While there's strong public support for accepting reasonable numbers of genuine refugees, many Canadians also believe there are serious problems with the current system and that Canadian generosity is being widely abused.

I think it's important to recognize that when Canada signed on to the United Nations refugee convention, we had no expectation of becoming a country of first asylum for any significant number of refugee claimants.

After War World II, we resettled more than 180,000 displaced persons from Europe, and subsequently thousands who fled from Hungary in 1956 and Czechoslovakia in 1968, and Asians from Uganda in the early 1970s, and Indochinese boat people later in the decade, including, by the way, some of my wife's family.

Canada did not expect to be a country of first asylum largely because of our geographical location. To get here, the vast majority of refugee claimants have to travel through countries where, under

generally accepted international rules, they could and, indeed, should have sought asylum if their real purpose was to reach a safe country.

I might mention in this regard that my own concerns over the shortcomings of our refugee system started in 1986, with the arrival off the coast of Newfoundland of a boatload of 150 people who said they had fled from Sri Lanka. It was later revealed that they had been living in Germany for several years where some of them already had been granted refugee status. They had decided to move on to Canada in the expectation of receiving more generous benefits here.

We had a chance to bring this sort of situation under control a few years later, when legislation to create the Immigration Refugee Board was drafted. It was our intention to establish a list of safe third countries, that is, safe countries where asylum seekers should have made their refugee claims before moving on to Canada to look for more generous benefits, which is a practice known as asylum shopping.

The establishment of a safe third country list would have prevented us from being deluged with claimants who were not entitled to make claims in Canada because they had opportunities to make them in the safe countries they'd passed through to get here. Unfortunately, an influential and persistent refugee lobby was able to convince the then minister of immigration that no country in the world was safe except Canada. As a result, our refugee determination system, which was designed to accommodate a fairly limited number of claims, has been largely overwhelmed since then. This has not only slowed down the processing of claims by applicants who genuinely deserve our protection but has also cost an immense amount of money.

John Manion, a former deputy minister of immigration and secretary of the Treasury Board, who was before a Senate committee in 2001, estimated that the cost of the refugee system in Canada amounts to billions of dollars a year. The costs associated with an individual claimant is estimated to be in the range of \$50,000. In comparison, our annual contribution to the United Nations High Commissioner for Refugees amounts to only about two to three dollars a year for each refugee and internally displaced person the UN cares for in its camps around the world.

The reason we spend so much more money on the processing of asylum seekers in Canada than on refugees in UN camps is that over the years a highly organized lobby of refugee lawyers and advocacy groups has been very effective in influencing successive governments with regard to refugee policy. We can expect these groups to make an all-out effort to block the passage of this legislation, because if it becomes law it could have serious implications for the income of many of them. The committee will no doubt be presented with a wide range of sometimes very detailed arguments from refugee lawyers and advocacy groups as to why the various parts of the legislation are not fair or do not meet our international obligations.

I believe that the provisions in Bill C-31 will in fact make the system much fairer than in the past, by substantially reducing the time required to approve claims that have merit. The system won't be clogged up with people who have manifestly unfounded claims.

The system won't be perfect; it's quite possible there will be some genuine cases that fall between the cracks. But bear in mind in this regard that Canada is by no means the only country in the world where people seeking asylum can apply. They have many other options if Canada does not accept their claim.

● (1535)

As for our international obligations, I believe these will be met under Bill C-31. But I'd also point out in this regard that the UN convention on refugees was drafted 60 years ago and updated with its protocol in 1967. Many of the features that characterize the movement of asylum seekers today—large-scale people-smuggling by criminal organizations, passage through safe countries by asylum shoppers looking for greener pastures, and claims made by nationals from safe countries such as the United States and Britain—and many of the challenges were not envisaged by the drafters of the convention and the protocol.

While I believe the legislation does indeed meet our obligations under the convention, I think the latter needs updating and revision to bring it into line with conditions that exist in the world today.

More than one political leader and refugee-receiving state has suggested that their country withdraw from the convention in its present form. I'll just mention one comment. Tony Blair, the former British Labour PM, said in his 2009 memoirs that the convention was written in response to the horrors of World War II and helped create a system that is completely unrealistic in today's world, utterly incapable of dealing with the massive numbers of asylum claims now being made. And I can quote other leaders who have said other things.

If you receive lectures by those opposing Bill C-31 to the effect that it fails to meet our international obligations, I'd point out that it probably does meet our obligations. But second, in any event, it's questionable whether we should feel bound by a convention that's very much out of date in some respects.

With regard, Chairman, to the specific provisions of Bill C-31, I'd say they are well thought out. They address many of the problems that affect the current system. It makes sense, for example, to put in place an effective procedure for designating safe countries of origin and expediting the processing of nationals of such countries. It

makes no sense to allow our system to be clogged up year after year with hundreds of American asylum seekers, along with some smaller numbers from such countries as Britain, Australia, France, or even Germany, etc. Virtually nobody else in the world gives serious consideration to nationals of countries that clearly do not persecute their citizens.

If I have any criticism of the bill, it's that it does not go far enough in some regards. In addition to designating safe countries of origin, for example, we should also establish a list of safe third countries. Until now we've only identified the United States as a safe third country, and there's no reason why others, such as the United Kingdom, France, and Germany, should not be given similar designations.

In the time I've been allotted, I won't attempt to comment on each of the major changes proposed in the legislation, but I regard all of them as essentially sound. I would point out that while we at the Centre for Immigration Policy Reform support these changes, this doesn't mean that we agree with the government on all policy areas of concern to us. In fact, we disagree quite strongly with the government on a number of key issues in the area of immigration policy.

As a general comment, I also wish to say that Canada should return as much as possible to its original intent of being a country of resettlement rather than first asylum. We resettle well over 10,000 refugees every year from overseas, most of whom have been screened by the United Nations and are determined to be genuine convention refugees. Most of the asylum seekers who come here to make claims could have applied abroad, but if they don't have a good case for such a claim, they know they are much better off coming here first, since it's common knowledge that they are likely to be able to stay here for years and receive generous public assistance even if their claims are found to be without merit.

In conclusion, Mr. Chair, I would point out that while critics of Bill C-31 will argue that its passage would be a step backwards by Canada as a compassionate and welcoming country, I do not believe this to be the case at all. We'll still be one of the most generous countries, if not the most generous country, in the world in welcoming refugees. I think we will have made major strides in reassuring Canadians that we can create an effective, fair, and efficient system that is not open to widespread abuse.

Thank you.

● (1540)

**The Chair:** Thank you, Mr. Collacott.

Mr. Showler.

**Mr. Peter Showler (Director, Refugee Forum, Human Rights Research and Education Centre, University of Ottawa):** Thank you, Mr. Chair. Good afternoon to the members of the committee.

I have provided you with two written briefs. The first deals with the bill's changes to the refugee claim process. The second addresses the policies underlying the anti human-smuggling provisions of the bill. There is a detailed biography in the first package.

You will see that I have worked as a lawyer representing refugees. I was a member of the Immigration and Refugee Board of Canada for more than six years deciding refugee claims. I was then the chairperson of the Immigration and Refugee Board for three years, with a managerial perspective on managing the resources of the refugee claim system. Finally, I have been an academic studying refugee systems and the international protection of refugees.

In making a recommendation I want you to know that I view the refugee system from all four perspectives. Certainly, I do not view myself as a member of any lobby in any particular direction. My fundamental allegiance is to the Canadian refugee system, one that makes decisions that are correct, fair, fast, and efficient.

In the time allowed, I will address only three aspects of the bill—the short time limits of the refugee claim process, the lack of an appeal for some claimants, and the government's deterrent strategy for group arrivals. My first brief includes a summary analysis of Canada's refugee system. It provides a brief description of the current system, some of its flaws, some of the reforms recommended by Bill C-31, and four recommendations that come out of that.

In regard to the refugee claim process itself, I must say candidly that the time limits are simply too short and will undermine its fairness and its efficiency. Refugees will not have a realistic opportunity to tell their story. A 15-day limit for claimants to file their basis-of-claim form is simply not enough time. In my brief at pages 4 and 5 I outline all of the steps that a refugee claimant has to take in order to file that form.

Please imagine a refugee claimant who arrives at Pearson Airport and makes a claim. They do not speak English. They know nothing of the city or Canadian culture. They don't know where to live. They don't know how to use public transport or how to use a cellphone, which they may have. They have very little money, and they don't understand the refugee system. Within 15 days they are expected to find a competent lawyer, see if they can get legal aid approval, instruct the lawyer appropriately for the lawyer to draft, through an interpreter, the information and deliver it to the Immigration and Refugee Board.

The result of a 15-day limit, in my view, will be more unrepresented claimants and more mistakes in the written form. Poorly drafted and incomplete statements make more work for a board member. Members depend on accurate information to prepare for the hearing. Poorly prepared hearings waste hearing room time and induce mistakes. I recommend that you grant 30 days to provide the written statement to the board. It is a modest gesture, with dramatic results.

For claims inside of Canada at the CIC office, there's a different procedure. I refer to it in my brief, and you can ask me questions about it if you wish. For an appeal to the refugee appeal division, there will be 15 working days to file and complete the appeal. Once again, it is simply not enough time. We cannot assume that it will be the same lawyer representing the claimant at the appeal. Some

claimants are already unrepresented, and candidly, some claims are lost because of poor legal representation in the first place.

Under our current system, the time allowed for judicial review applications is 45 days. It has been the experience of counsel over many years that it is not enough time. By contrast, the refugee appeal division members will have 90 days to make their decision. I'm telling you that 15 days is far too short. I recommend 45 days in order to file and complete the appeal. Again, you can ask me questions about that.

For the designated country of origin claims, hearings are scheduled for 30 days after delivery of the claim form. This is an insufficient amount of time for claimant and counsel to obtain and deliver the evidence. The most important evidence is claim-specific. It's usually located in the country of origin, and it's often difficult to obtain. In addition to that, medical and psychological reports are often by far the most germane evidence for the board member to consider. I think you would all understand that it's not possible to obtain those, particularly psychological reports, within 30 days. If the evidence is not available, the results will either be adjournments of hearings—which is inefficient—or unfair decisions based upon incomplete evidence. I recommend that we return to the Balanced Refugee Reform Act, which allowed 60 days for the DCO hearings, and 90 days for regular hearings.

● (1545)

The minister has said that the faster process is necessary to deter fraudulent claimants. In our current system, to process a claim, it takes four to five years from date of claim to date of removal, and that is obviously far too fast. This is not a justification, though, for imposing unrealistically short timelines. Claims that are decided in six to nine months are more than adequate to deter manifestly unfounded claimants. For regular claims, 12 months would be adequate.

I can tell you, based on 25 years of experience in the field, that claimants, whether fraudulent or not, often invest everything in trying to get to Canada. They mortgage their homes. They borrow money. If those people return to their country in five to six or seven months, I assure you that you will not see a second wave of fraudulent claimants from that country. Superfast turnarounds of 45 days or 75 days are simply unnecessary and, in my view, they will be unfair in the sense that incorrect decisions will be made.

In regard to section 36, which defines the six categories of claimants who will not have a right of appeal, firstly, I applaud the government for implementing the refugee appeal division, which has been in the law since 2002 but was never implemented. The lack of an appeal has been one of the critical flaws in Canada's refugee system. This will certainly help to ensure that the board's decisions are well reasoned and reliable.

Refugee claims are not easy to decide. The evidence is inaccessible. Claimants are fragile witnesses. Mistakes are made, inevitably, by the best of board members—and candidly, I must say that some members fall below that standard.

I think you heard Professor Rehaag this morning refer to some of his reports. They are definitive reports, showing that for the individual acceptance rates of IRB members, the variance between the individual rates is unacceptably broad. The unavoidable fact is that for some of the decisions, they are simply not reliable. The solution to that is to have a refugee appeal division appeal for each one of those decisions.

In my brief, I refer to why, for some categories of claimants, it is even more important that they have an appeal. You can ask me questions about that if you wish.

In conclusion, on the issue of fast process, I'll just simply make three points: allow for modestly longer time limits, to give claimants a fair and reasonable opportunity to prove their claims; allow an appeal to every claimant to catch the mistakes that are inevitable, especially with a faster claim process; and have prompt removals of failed claimants. Those timelines are more than adequate to eliminate fraudulent claims while ensuring fair and reliable decisions.

My second brief deals with the attempt to deter group arrivals by way of one-year mandatory detention—or up to one year—and long-term separation of families. I've left the arguments on legality and constitutionality for others.

Mr. Kenney has stated that the purpose of these provisions is to deter asylum seekers from using irregular means to seek protection in Canada. The assumption that mandatory detention will deter asylum seekers from coming to Canada in groups unfortunately has no basis in fact. Australia imposed mandatory detention on all boat arrivals in 1994. Over the following several years, the number of arrivals increased, not decreased.

As well, my brief provides you with the statistics on the number of claims in a chart. It also shows the work of UNHCR researchers, which shows that mandatory detention does not deter asylum seekers.

There are reasons why mandatory detention does not work. There are four principal reasons. First, there were studies done of the detainees in Australia. The majority of the detainees did not even know about the detention policies, the reason being that their primary source of information was the smugglers. Even the minority who did know about the detention policies did not believe them. They thought, "Australia, this is a country where there is the rule of law and democracy." They did not think it could be that bad—

• (1550)

**The Chair:** Could I ask you to wind up, sir?

**Mr. Peter Showler:** Okay. Thank you. I'll just go to my conclusion, then.

Let me conclude by saying that it's possible to make fair and reliable decisions in a relatively short period, to catch our mistakes with an appeal, and to still remove failed claimants promptly and preserve the integrity of our system without resorting to harsh measures such as long-term detention and family separation.

I welcome your questions on any part of the bill.

Thank you.

**The Chair:** Thank you both for your presentations.

Ms. James.

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

I'm going to direct most of my questions to Mr. Collacott.

But Mr. Showler, you said something about four to five years being far too fast for refugee—

**Mr. Peter Showler:** Did I say fast?

**Ms. Roxanne James:** —and I wanted to let you correct that and say that it's way too long.

**Mr. Peter Showler:** Mr. Chair, did I say slow or fast?

**Mr. Rick Dykstra (St. Catharines, CPC):** It's okay. We understood.

**Ms. Roxanne James:** I just wanted to give you an opportunity to correct that.

I'm going to direct my question to Mr. Collacott.

Welcome back.

This morning, of course, we've had hours of debate on this bill and had the opportunity to speak with the assistant deputy minister of strategic and program policy, and the director of asylum policy and programs from Citizenship and Immigration. One of the questions I asked was: surely Canada is not the only country that will process some claims faster than others, is it?

I want to understand from your own personal experience what you can tell this committee concerning the negative impact there will be if we in Canada do not go with this method of processing some applications faster and move to a faster and fairer processing system.

**Mr. Martin Collacott:** The ones that would be processed more quickly, of course, are those from designated countries such as the United States, and we have hundreds every year from the United States.

First of all, these clog up the system with people who are almost never going to get refugee status but are able to stay here for quite some time. It makes it more costly, but importantly, it slows down the processing of other people.

Many other countries have rapid processing. In fact, some won't even let them cross the border. Denmark won't let someone from a safe third country in; they're stopped at the border.

Frankly, I would support that. I know it would be difficult to get politically accepted, but I think most western countries now have some way of dealing with people whose claims don't make sense. The idea that Britain or Australia or Sweden, from which we get a few claims every year, persecute their citizens in any way just doesn't wash, as far as I'm concerned.

**Ms. Roxanne James:** Thank you.

You hit the nail on the head, in that this system is going to crack down on the bogus refugee claimants and at the same time make sure those who are legitimate refugees will be able to have their claims heard quicker—faster and fairer—and get the support of Canada.

When we talk about the reasons or pull factors explaining why people choose Canada over other countries, we have a situation in the province of Ontario right now. My riding is Scarborough Centre. As you know, with the welfare system in Ontario, we have a real issue right now in this particular province, whereby bogus refugee claimants can come in, file their application—and the countries we're talking about are those in the European Union, from whom 95% of the claimants will literally walk away from their claims—and stay here long enough to start collecting those lucrative benefits.

I'm wondering what your comments are on this. I don't think Canadian taxpayers realize the cost to us, the hardworking Canadian taxpayers. It's actually \$170 million a year alone for bogus refugee claimants from the European Union.

I want to know what your comments are on this.

•(1555)

**Mr. Martin Collacott:** It's very expensive.

By the way, Jack Manion, who was deputy minister of immigration and secretary of the Treasury Board—he's now deceased—estimated before a Senate committee that the whole system costs us several billion dollars a year.

The kind of problem we have is illustrated by a spike we had in Argentinian claimants in 2001. Thousands of Argentinians came in, claimed refugee status at the border, started collecting welfare, took a two-month holiday, and then returned to Argentina. That's an extreme case, but this is the kind of problem we're facing. We've had spikes of people from Turkey, from Trinidad, from Portugal, from all sorts of places where consultants learn that Canada is a sitting duck in the refugee system.

So I think we have to establish safe countries of origin, certainly, and I would also recommend safe third countries. Most of our claimants come from or often through European countries, where they should have made their claim. So we need two things to slow this down.

**Ms. Roxanne James:** Thank you.

In response to my first question, you mentioned some other countries that process claims faster in some cases and not as fast in others. I'm wondering what Canada can learn from other countries such as the U.K., New Zealand, and Australia about creating a more efficient and fairer refugee system.

**Mr. Martin Collacott:** I wouldn't say they have it all right in all respects. Australia, when it intercepted boats and had the claimants processed overseas, did it because, as one minister of immigration there said—this was after the Iraqi war started—that the UN considered that only 10% to 15% of the Iraqi refugees who reached UNHCR camps in Jordan should be resettled abroad. That minister of immigration said that once they arrived in Australia, 97% somehow managed to stay. There's a discrepancy there.

I would say that we have to do as much as we can to encourage people to make their claims overseas. We have a generous system for processing them. The whole problem is letting large numbers of people make claims in Canada.

**Ms. Roxanne James:** Thank you.

Do I have more time?

**The Chair:** You have about a minute.

**Ms. Roxanne James:** I'll try to be very quick.

I'm trying to go back in my memory because I know that you have been a guest here in this committee on other business. If I'm not mistaken, you once said that you had interviewed a number of terrorists or suspected terrorists. You said that 25% of them had actually come to Canada as refugee claimants. Am I remembering that correctly?

**Mr. Martin Collacott:** I didn't interview them myself, but in certain communities, quite a substantial number of the people who had terrorist connections came in as refugee claimants.

**Ms. Roxanne James:** So it would be advisable under this bill, with the use of biometrics and screening, to identify the person before they arrive in Canada and make sure we stop them from coming to Canada?

**Mr. Martin Collacott:** Yes. I wouldn't say that biometric screening is going to screen out too many terrorists, but I think it's good for other reasons.

**Ms. Roxanne James:** But one of the purposes of the entire bill is to make sure that we know that who applies is who arrives.

**Mr. Martin Collacott:** Yes, who applies and who arrives. I like the biometric part. I just don't think it goes far enough, either.

**Ms. Roxanne James:** Thank you.

**The Chair:** Goodbye.

Ms. Sims.

**Ms. Roxanne James:** I knew you would say that. Thank you.

**Ms. Jinny Jogindera Sims (Newton—North Delta, NDP):** Thank you very much to both of you for coming and presenting.

My question here is specifically for Peter.

Peter, we have seen the statistics from Australia showing that mandatory detention doesn't really discourage asylum seekers. As a matter of fact, sometimes it increases the number of asylum seekers. It's maybe not a direct role, but it's obviously evident there. Is there any explanation for why mandatory detention did not work in Australia?

• (1600)

**Mr. Peter Showler:** Yes, there is. I mentioned part of it already in that asylum seekers don't get the information about what's going to happen to them. Secondly, in terms of the detention, they don't think it's going to be that bad. But the third reason they gave—and this is the obvious one—is that they are desperate people. I am sorry, but when Mr. Collacott talks about their being in a place where they can claim settlement.... For example, many come from Thailand. They come from Malaysia. They come from Indonesia. These countries are not signatories to the UN convention. Their status there is that they are illegal.

If you read it in The Canadian Press, there was a story this morning about a woman in Thailand in exactly that circumstance. What can happen to them is this. They can get an UNHCR registration within six months. That does nothing for them. They are vulnerable to arrest; they are vulnerable to corrupt officials; they are vulnerable to criminals. Thailand, Indonesia, and Malaysia will return them to their country of persecution. They do not get sent elsewhere. That's the desperation. That's why so many of them will take the chance on the boat. Some of them won't take the chance on the boat.

There are no alternatives, and there are no refugee camps. The refugee camps in Thailand, for example, are only for the claimants from Myanmar or Burma. They are not for other claimants. They do not have good options. It's important to understand that.

**Ms. Jinny Jogindera Sims:** Thank you for clarifying that not every refugee who arrives can arrive through the resettlement program, and also the fact that not every refugee who is trying to get into Canada is a terrorist just waiting to come and do harm.

**Mr. Peter Showler:** Let's talk about the resettlement program that was referred to. Please understand that Canada is the second-most generous country in the world. We actually accepted about 13,000, which is just after the U.S. But the resettlement program under the UN convention was never intended as the primary vehicle for bringing refugees to the country. Even within those refugee camps, there are three durable options.

The first one is repatriation. The second one is local integration. Only the third is resettlement. We took 13,000. There are over 4 million people in refugee camps. The average amount of time in a refugee camp is 17 years. Let me ask every member of this committee. I'm sorry to be personal about it, but I'm a father with a couple of kids. If I had a choice about where I would be stuck somewhere and I'm illegal and can either go to a hellhole of a refugee camp for 17 years, or I could find a way to get my kids to a safe country, whether it's Canada or somewhere else, I know what I would do if I could find a way to do it.

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

I'm going to move to a different aspect of the questioning. Why is an appeal so important if there's an application for judicial review? What is the difference between the two processes? If you could explain that to us, I would really appreciate it.

**Mr. Peter Showler:** I repeat that I'm delighted that the government has implemented the appeal division. It was necessary.

The judicial review application is only application for leave for judicial review, which is permission to do a judicial review. Only 14% get the leave application. Once again, Professor Rehaag's statistics show that there's a tremendously wide variance in those leave application decisions by the Federal Court judge. But even if you get that leave, the Federal Court is making a determination on the basis of issues of law. I know there are some lawyers here at the committee. Issues of law can include egregious findings of fact. But they are deferential to the board. It is not an appeal. Their only power is to send it back for another hearing.

For the refugee appeal division, it's universal access, so everybody gets their appeal considered, and if there are fundamental errors where it's obvious on the evidence that they are refugees, the appeal division has the authority to overturn the decision. It is intended to catch the mistakes, to put it simply.

**Ms. Jinny Jogindera Sims:** Do I have a few more minutes?

**The Chair:** You do.

**Ms. Jinny Jogindera Sims:** A lot seems to be hanging on this in this legislation, so what is the difference between a refugee claimant who arrives at an airport and one who arrives in a group on a boat, if they both have used fraudulent documents to get to Canada? To me, a refugee is a refugee whichever way the person arrives, but this piece of legislation definitely differentiates between the two.

**Mr. Peter Showler:** When they arrive, they're not refugees; they're asylum seekers and they're refugee claimants. However, we do no lists from the boats. If someone arrives in a group, we cannot make any assumption about the merits of their claim, whether or not there's a greater or lesser possibility that they're a refugee.

To give you a contrast, when the first boat arrived from Sri Lanka, the acceptance rate for Sri Lankan claimants was 76%. Ten years earlier, with the four boats from the People's Republic of China, the acceptance rate was less than 5%.

We can't draw conclusions just because it's a group arrival. Also, we can't draw any inference that it is an increased threat to Canada one way or the other because they're in a group. It is not a security threat.

What is the difference? The only difference, quite frankly, is that the person who arrived with fraudulent documents and manages to get through Vancouver International Airport probably had more money and was able to buy better quality documents to get to Canada.

In terms of threats to Canada, in terms of the merits of the claim, there is no difference.

• (1605)

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

**The Chair:** Thank you.

Mr. Lamoureux.

**Mr. Kevin Lamoureux (Winnipeg North, Lib.):** Mr. Showler, my questions are for you.

In listening to Ms. James, I think she used the term “bogus refugee claimants” about four or five times. I know there is a difference. I'm wondering if you could expound on the government's use of the term “bogus refugees”.

**Mr. Peter Showler:** Certainly. I take bogus refugee to mean a fraudulent refugee. By that I mean someone who knows they are not a refugee and they're coming to Canada anyway. In other words, they are abusing Canada's refugee system.

I think where the confusion occurs is with this notion of failed refugees. If someone's claim is refused, it does not necessarily mean they're bogus. They may very well have come to Canada with the belief that they're refugees and genuinely seeking protection, but in actuality they're refused.

A good example of this would be the many Mexican claims that have come over the last five or six years. A lot of those claims were refused, not because the person didn't have a fear of either drug lords or someone else, but because of technical, legal reasons within the definition. The conclusion by the board of the Federal Court was there was adequate state protection for them, or in other instances they thought there was another part of the country to which the person could go to be safe. In many cases, the credibility of the claim was accepted and it was within the technical definition of a refugee.

In my view, those people are not bogus refugees. We may have a difference of opinion with the minister and others, but I think it is not only unfair to characterize them in that way but that it also, in a way, distorts the issues when trying to understand an effective system that will let real refugees be here and quickly identify non-valid claims and remove them.

**Mr. Kevin Lamoureux:** It's a poor way to label is what I think.

A big part of this is all about fraudulent claims. Are there thoughts you might want to share with the committee in regard to how you would deter these fraudulent claims?

**Mr. Peter Showler:** I've already mentioned to you this notion of determination within six to seven months. I accept the concept of a designated country of origin. I accept the notion, though not everybody will agree with me, that there are some so-called advocacy communities, but I think it's possible.

What's important is that you can deter the claims. You can do two things. I'm saying that you can have your cake and eat it too. You can have a well-reasoned decision. You can have a well-reasoned appeal. And when they're not refugees, you can promptly remove them from the country. Certainly if you do it in six to seven months, as I say, I am very confident that you will deter flows of fraudulent claims.

**Mr. Kevin Lamoureux:** In regard to detention centres, we've had the minister refer to them as being almost like motels of sorts. I wonder if you can share any experience or knowledge you might have about detention centres.

**Mr. Peter Showler:** I can share both my experience and the research that's contained in the brief I provided to you, the second brief.

Essentially, we know there are only 299 spaces available across Canada for detainees under the federal program. Most of them are full all the time. So the principal concern is that if there's any significant group that comes, as has happened with the two boats on the west coast, they will be referred to provincial penal institutions—and they're not detention centres, but penal institutions. There will be other witnesses who appear before you, but you will have the briefs to show you that they're being placed in penitentiaries where the staff is used to dealing with criminals. They'll be in with mixed criminal populations.

One of the exceptions to this is that they did not put the mothers, the parents who had children, with them. They kept those in the detention centre in Burnaby.

But again, my concern as a Canadian is this. These are people who are refugee claimants. They may or may not be refugees. But we know a significant number of them may be victims of torture. They may already have gone through hell in civil wars, such as the one in Sri Lanka. And the issue is that if people like this, who do not speak English and who are easily separated out from the population, are being placed in penal institutions, then I feel there is a significant policy concern. And that has to be considered.

• (1610)

**Mr. Kevin Lamoureux:** Do I have time for one last question, Mr. Chair?

**The Chair:** You have about 10 seconds.

**Mr. Kevin Lamoureux:** In terms of the detention centres in the U.K. and Australia, would Canada do well to look at those as models?

**Mr. Peter Showler:** No.

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** Mr. Showler, you referred earlier to the detention system that Australia implemented. Could you tell me where your quoted facts and figures are from, and their date?

**Mr. Peter Showler:** They're all in my brief, with footnotes. You'll have the exact numbers. There's also a quote from about a year ago by the minister—I forget his name—who stated and retracted the policy, saying that it was a bad idea. But it's all in the brief, sir.

**Mr. Rick Dykstra:** Great. I look forward to looking at your briefs, because in March of this year the United Nations did a report on what was happening with respect to asylum seekers. The only country that actually saw a decline in asylum seekers was Australia. The UN actually stated that there was a reduction because of the issues around the detention policy that Australia passed, which therefore meant that asylum seekers were going to another country.

Sir, I'm not arguing with your point—

**Mr. Peter Showler:** Let me say this. One of the quotes in there is from Alice Edwards, who is the principal researcher for the UNHCR. So I think you'll find it's quite the opposite.

**Mr. Rick Dykstra:** I'm quoting from a report directly from the United Nations. I can give you the report. "Asylum Levels and Trends in Industrialized Countries" said that the numbers heading to Australia in 2011 fell 9%, from 12,640 in 2010 to 11,510 in 2011.

That is a decline, sir. You suggested there was an increase. I'm just stating for the record that there was actually a decline.

**Mr. Peter Showler:** With regard to the increase in numbers, the mandatory detention policy was put in place in 1994. You will find the chart in there showing significant increases each year. It stopped in 2001, and there was a decline.

**Mr. Rick Dykstra:** Sir, I'm just pointing out that from 2010 to 2011, there was a decline. The UN points to the detention as a potential reason for why the decline has taken place. I'm asking you only to acknowledge that, not to agree with it.

**Mr. Peter Showler:** I'm saying that what caused the decline in 2001 was the Pacific solution, when they actually kept all boats from arriving in Australia and sent them to Nauru.

**Mr. Rick Dykstra:** Well—

**Mr. Peter Showler:** Then they achieved.... But sir, as a reasonable—

**Mr. Rick Dykstra:** I'm just asking you. I'm just stating for you—

**Mr. Peter Showler:** I'm not going to—

**Mr. Rick Dykstra:** I'm asking the questions, right?

**The Chair:** Stop the clock.

**Mr. Rick Dykstra:** Mr. Showler may not like—

**The Chair:** Well, we seem to be getting into a debate between the witness—

**Mr. Peter Showler:** I don't want to get into a debate.

**The Chair:** Sir, we seem to be getting into a debate—

**Mr. Peter Showler:** I've stopped.

**The Chair:** —and could I suggest that both of you move on to something else?

**Mr. Peter Showler:** Of course.

**Mr. Rick Dykstra:** Sure.

**The Chair:** It appears that you disagree, and let's leave it at that.

**Mr. Rick Dykstra:** I'm going to turn my time over to Mr. Opitz.

The one point I want to make, sir, is that if you're going to bring up an example of how I would treat and bring up my children versus what you would do, I would hope that my children would understand that those sitting in a refugee camp for up to 17 years deserve to be

treated fairly. And the best way to do that is not to smuggle people to the country and have them enter more quickly than someone who's had to wait that long, as you've suggested.

It's just a personal observation, but I disagree with you on that.

**The Chair:** Mr. Opitz.

**Mr. Ted Opitz (Etobicoke Centre, CPC):** How much time do I have?

**The Chair:** You have four minutes.

**Mr. Ted Opitz:** Okay.

There's also the problem of human smugglers, in that this is not a safe way of passage. These are guys who are often tied to organized crime, who often intend to traffic people or make money from smuggling. Oftentimes, smuggling and trafficking become one and the same thing, and that puts people in dire circumstances. There are incidents where these smugglers out at sea, if they get caught, oftentimes throw people overboard. It's a very dangerous pursuit if they do that. I think everybody's in agreement on that. It's oftentimes not the safest way for people to try to come to Canada.

Also, in response to my friend, not everybody trying to come to Canada is a terrorist, but there surely are a few. It only takes one determined guy to get here by using the refugee system to cause a tremendous amount of harm to this country. There have been examples of that. So we have to be very careful in that instance.

As well, some people do queue jump by using the refugee system, and they are bogus or fraudulent refugees, and that clogs up our system.

Mr. Collacott, you used a term I thought was very interesting. You used the term "asylum shoppers". Could you expand on that term, sir?

• (1615)

**Mr. Martin Collacott:** The example I used was the 152 people who arrived off the coast of Newfoundland in 1986. I was involved in that, because I had just been the high commissioner in Sri Lanka and had just returned. They had asylum in Germany, but I think it's reasonable to assume that they had heard there were much better benefits in Canada.

Basically, they're people who travel through countries where they could have made claims. Their primary objective, presumably, is to reach safety. But in fact their real objective is to go to a place where they can get a lot of benefits. Safety is not their first concern. They will move on to find a country. Canada is probably the most generous country in terms of benefits, so they try to get to Canada, even if it's the hardest to reach geographically.

**Mr. Ted Opitz:** Yes, absolutely. I know that earlier witnesses said that many asylum seekers who had come here boldly said to CBSA that they had come here for the money. But our law was to process them through at that point in time.

Turning to detention, what is your view on detention, sir?

**Mr. Martin Collacott:** First of all, the term “detention” is sometimes equated to imprisonment, and in some cases, as Mr. Showler pointed out, people are kept in penal places. The recent influx of Roma people from Hungary, in fact, is probably mostly kept in hotels, and the space available for the Canadian-born who may need assistance is limited.

Detention is an interesting term for asylum seekers. It's sometimes considered that they are innocent until proven guilty, so why should they be held? It is not like a prison; they're free to leave any time they want. Any time they want to drop their claim and leave, they can. They're only being told that if they want to come and stay in this country, they have to put in a holding place until a decision is made if they deserve to be kept here.

I believe that widespread detention probably does make quite a bit of sense, particularly for the mass arrivals, because we're overwhelmed with numbers. We cannot screen them quickly. They pose a particular problem, not just in terms of large-scale criminal gang operations and possibly terrorists, but also in terms of sheer numbers. It draws resources off all sorts from other areas.

**The Chair:** Thank you.

Monsieur Giguère.

[*Translation*]

**Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP):** Good afternoon.

My thanks to our witnesses for joining us today.

My first question is for Mr. Collacott.

How do you feel about a new act that gives the minister the permission to designate what constitutes an irregular arrival? The very same minister also designates what a safe country is, what an illegal immigrant is, and even what grounds for detention are. This bill has a host of ways in which a minister can intervene at any point during the enforcement of the act and overturn the decision of his officials.

Structurally, do you feel that this will help us unblock the system when any politician can systematically intervene at any time and put pressure on the minister?

[*English*]

**Mr. Martin Collacott:** That's a good question, Monsieur Giguère. The new act does give the minister more authority, but it brings us in line with what most other countries do. One of the objections is having public servants do the initial screening, instead of having an independent body.

There will be reviews by an independent body, but you will get much more continuity and consistency in the decisions. We'll be doing what other countries do.

I don't know of any part of the increased authority—and you're quite right there will be increased authority for the minister—I have difficulty with. I don't know if there's some specific aspect you want to ask about, but it will simply bring us into the 21st century. We've taken a long time getting there, and that's why our system is so dysfunctional.

• (1620)

[*Translation*]

**Mr. Alain Giguère:** Thank you very much.

Mr. Showler, the minister states that designated foreign nationals are jumping the queue of refugees. Could you explain to us what the queue of refugees really is?

[*English*]

**Mr. Peter Showler:** It's clear that I disagree with some of the people here at the committee, but in my view there is no queue. That's because, first of all, the UN refugee convention allows for someone to come to a host country under the convention to seek protection. Here, Mr. Collacott said that Canada supposedly didn't know what it was signing on to, but I think it understood very well what it was signing on to.

That is the core part of international protection. That is what occurs. There is no queueing up. There is no principle anywhere in international law that suggests they go to a refugee camp. I've already explained that some can't even get to one; but in any event, there is no queue. That's not how it works. They come to a country.

There is this notion of a safe third country. Mr. Collacott referred to it before. However, Mr. Collacott unfortunately referred to it as though it were arbitrary. Safe third countries are where there's an agreement, as we have between the United States and Canada. Canada, candidly, would love to make agreements and has considered agreements with countries in Europe, but countries there are not prepared to make those agreements because they would have to be two-way agreements.

But essentially there is no queue, in law or fact.

[*Translation*]

**Mr. Alain Giguère:** Great.

I am going to ask the same question. With this bill, the minister can have the authority to decide whether people involved in an irregular arrival are irregular refugees.

As the receiving country, the minister makes the final decision as to whether a country is declared safe or not. In other cases, it is the minister once more who decides what may constitute humanitarian grounds. Will the act not become difficult to enforce with this kind of political and partisan muddying of the waters that opens the door to lobbyists?

[English]

**Mr. Peter Showler:** I don't refer to it much in my brief, but there are other briefs presented. Certainly from a legal view there is a combination in both the designation of countries of origin and of foreign nationals as group arrivals. In both situations the concern is that the criteria for the designation are extremely broad.

Second, the limits on those powers or the discretion are virtually non-existent. There are some within the designated country of origin, but not much.

**The Chair:** Thank you, Mr. Showler.

**Mr. Peter Showler:** The concern is that it's too broad and too vague.

**The Chair:** Thank you.

Mr. Menegakis, go ahead.

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

Welcome, gentlemen. Thank you very much for your presentations here today.

The intent of Bill C-31 is to help facilitate the process to make it faster. The intent was not to penalize people who legitimately seek our assistance. With the new measures in the bill, the time to finalize a refugee claim, a legitimate refugee claim, would drop from a current average of 1,038 days to 45 days for claimants from designated countries of origin, or 216 days for all other claimants.

So we can imagine what a huge benefit this will be to somebody who's really seeking and needing asylum from persecution in their own nation. In my opinion, that's a big positive of this bill.

Mr. Collacott, let me preface my question by saying that human smuggling seeks to circumvent the proper channels. In your opinion, are human smuggling rings becoming more elaborate?

• (1625)

**Mr. Martin Collacott:** I think they get more sophisticated. The more barriers you set up against them, the more complex they can sometimes be. I think the sheer numbers coming in by boat pose a major problem, but smugglers have been using forged documents and fraudulent documents for years.

Mr. Showler mentioned that we agreed originally with the UN convention. In fact, we didn't know what we were in for because these problems hadn't developed. Human smuggling was estimated by the International Organization for Migration as an \$18 billion-a-year operation, and that was 10 years ago. It's probably much more now. There's a lot of money involved. People say that a lot of drug dealers are now switching to human smuggling because the penalties are less. So it's a huge problem and it doesn't only apply to irregular arrivals. There have been estimates of 70% to 90% of the people being smuggled come in by air on flights. The problem is that it's very difficult to pursue each one of those cases.

But human smugglers are very heavily involved in the movement of asylum seekers as distinct from people we take from camps. By the way, Mr. Showler mentioned there were four million people in camps. The UN doesn't consider most of those as needing resettlement. They need to be given temporary protection until they

can go back to their homelands. The number they consider needing to be resettled is still significant, but it's much smaller. It's in the hundreds of thousands, at most.

**Mr. Costas Menegakis:** Certainly they become money-making operations and, in many instances, sophisticated money-making operations.

From your time as high commissioner to Sri Lanka, ambassador to Syria and Lebanon, and ambassador to Cambodia, could you tell us about the human smuggling operations in those countries?

**Mr. Martin Collacott:** I can't recall cases of major human smuggling there. In Sri Lanka, the boats hadn't started yet, and it's the irregular arrivals that much of this bill is aimed at.

In Canada's case, they first began to increase in number in 1986. In Australia, as Mr. Showler mentioned, one of the main reasons why there was a dip in claims in Australia was that the John Howard government instituted the Pacific solution, where they simply didn't let people land. They processed them overseas. They considered their claims and accepted some and turned down others. Kevin Rudd, when he became prime minister in 2007, said that was too harsh and moved to let them all in. Well, hundreds arrived, and that was one reason why he lost the leadership of the Labour Party and the prime ministership. It was not the only reason, but that was one of the major ones.

Most of the human smuggling has been by air; larger numbers have come by air, one or two at a time. But these big operations really do test a system and create special problems, and I think you do need legislation to deal with them. I hope that we can eventually have something to deter all human smuggling, but when they come in one or two at a time, they're not easy to identify.

**Mr. Costas Menegakis:** Am I done?

**The Chair:** You are, sir, and I think that we are going to be short of time because of the vote tonight.

Mr. Showler, Mr. Collacott, thank you to both of you for coming and making your presentations to us.

We will suspend for a few minutes.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

•  
• (1630)

**The Chair:** I call the meeting to order.

We have two witnesses, and we will end this second round at 5:20 because of the vote tonight. The last session will begin around 5:20 as well.

We have Julie Taub, an immigration and refugee lawyer.

Good afternoon.

We also have two people from the Canadian Civil Liberties Association. Noa Mendelsohn is the director of the equality program.

I didn't say your last name. It's Aviv.

**Mrs. Noa Mendelsohn Aviv (Director, Equality Program, Canadian Civil Liberties Association):** Now you have the whole thing.

**The Chair:** Nathalie Des Rosiers is the general counsel.

Good afternoon to you.

Each group will have up to 10 minutes. We'll start with Ms. Taub.

**Ms. Julie Taub (Immigration and Refugee Lawyer, As an Individual):** I'm just wondering if everybody got my brief, bio, and background information.

**The Chair:** Yes.

**Ms. Julie Taub:** I don't want to dwell on that. Suffice it to say that I am a former member of the Immigration and Refugee Board, and an immigration and refugee lawyer in Ottawa exclusively since 2001. Previous to that, I was on the refugee board.

I think it's important to refer very briefly to my personal background, so you'll have a thorough understanding that I have not only professional but also personal, in-depth knowledge of what a refugee is. I am a sister of a child Holocaust survivor, and I am a child of my late parents who were Holocaust survivors, so I know what it is to be a refugee.

My late mother and my sister, who is much older than me and still alive, survived Ravensbrück concentration camp. My late father escaped a labour camp in Germany and got back into Czechoslovakia, and hid out in the Tatra Mountains during the war. He managed to save his elderly parents and for some time he hid with the partisans, that is, with the resistance groups, and finally he hid in a bomb crater and was rescued by the Soviet army.

From that experience, I wish to address the committee today.

I'm here to support Bill C-31. I might also add that I have represented hundreds of refugee claimants. Since 2001, I have had claimants from Sudan, Nigeria, the Democratic Republic of Congo, Eritrea, Djibouti, Somalia, Ethiopia, Uganda, Lebanon, Syria, Egypt, Morocco, Algeria, Colombia, Venezuela, Haiti, Cuba, and even Mexico. That list may not be exhaustive. I certainly didn't have a chance to review all of the clients I've had in the last 11 years.

Recently, I've had some hearings for Eritrean clients in January and February, which were outstanding from late 2009 and 2010. I have at least a dozen outstanding refugee claims from 2010 that still haven't even been scheduled for hearings.

I support the accelerated process that the minister has brought forth, because waiting two or three years to have a hearing is completely ridiculous.

As we all know, and I'm sure you all know, the Holocaust was the basis of the 1951 international convention, and its updated protocols in 1967. This convention was not drafted to serve an industry of criminal smugglers, the people who may or may not be genuine refugees, or to facilitate asylum shopping, that is, asking which

country one can get into to get the most generous benefits and highest acceptance rate.

It was not drafted to even consider claims from citizens who come from established democracies. I'm not talking about those where the qualitative and quantitative criteria set by the minister can vary from year to year. I'm talking about established democracies that have evolved over the centuries, such as the United States, New Zealand, Australia, the European Union countries, and even Japan since World War II.

I do not believe that the convention and those who drafted it had this in mind, that people such as U.S. citizens would be considered for refugee claims.

The current system that we have, as far as I am concerned, besmirches the memory of Holocaust survivors. The very thought of treating on equal footing somebody from the United States or Britain or Sweden with refugees from Darfur or Rwanda, or women fleeing Sharia law or genital mutilation—and I have represented them all—is just outrageous as far as my personal opinion goes. Then there's also the issue of Christians who are now fleeing massacres in certain Islamic theocracies. Those are the real refugees.

● (1635)

The over 100,000 Karen people sitting in Mae Sot district of Thailand in UNHCR refugee camps are also the real refugees. I have personal knowledge of the Mae La refugee camp, because my daughter, now a physician, volunteered as a fourth-year medical student in Mae Sot medical clinic in northern Thailand. That Mae Sot medical clinic services that sprawling, horrible refugee camp of over 100,000 Karen people. Through her intervention and my intervention we were able to bring to Canada one Karen person who had originally been turned down, Eh Hso Gay, whose aunt and uncle lived in Ottawa. The only way someone could leave the refugee camp was to have an appointment at the clinic. She brought Eh Hso Gay into the clinic twice. I sent her the questions and told her to interview her, and then she was interviewed by the CBC and, of course, Immigration Canada heard that and they reversed the decision and Eh Hso Gay was brought to Canada.

Now, when there is criticism that there are designated countries of origin, I have no issue with that. And I have no issue with safe third-country agreements, because believe you me, Jewish refugees who were trying to flee Europe would not have shopped around. They would have gladly taken any country, any first country they could have stepped foot in, and made their asylum claim there. They wouldn't have traipsed around the world to find a country with more generous benefits.

As I speak now, anti-semitism is on the rise in Hungary. And since I was an infant born on the Hungarian side of the Czech-Hungarian border at that time, I have friends in Hungary, one of them being Peter Feldmajer, the head of the Jewish community in Hungary. Anti-semitism is what the new right wing government has almost state sanctioned. He said to me that the young Jewish people, his children included, are leaving. But they're not making refugee claims; they're going to one of 26 other European Union countries, and they're not coming to Canada. They're going to one of the other countries or to Israel. You don't have masses of Jews coming from France, where they're being attacked daily, and making refugee claims. They're going to other EU countries.

It's said that there's not enough time to make a refugee claim in the 45 or 90 days, etc., the minister is trying to set to accelerate the claims. But under the current system claimants have 28 days to submit a personal information form. And all the hundreds of claimants I have represented never had an issue getting that personal information form, which is the basis of the claim, to the Immigration and Refugee Board. The issue has been having to wait two years to get a hearing. That's where the issue is.

Moreover, having an accelerated process for claimants from designated countries of origin is not an issue, because we're simply implementing measures similar to those in many EU countries. For example, some countries in Europe do the following—and I have a whole list of these countries. In the United Kingdom, for those coming from what are considered to be safe countries of origin, they fast-track the claims in 10 to 14 days. In France, it's 15 days. In Germany, it's two days if they come from countries such as Canada, the United States, Australia, and New Zealand. They don't even accept refugee claims from other EU countries, because as you are fully aware, a citizen of one EU country has the absolute right to go and live and work in another EU country. You might say that if we're going to refer to the Roma, there might be an impediment because of language. Well, when they come to Canada there is the same impediment. They speak Hungarian or Slovak, depending on where they're coming from.

• (1640)

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

**Ms. Julie Taub:** Okay.

The one exception I have to supporting the Minister is that he is expecting faster decisions to accelerate the overall processing times on refugee claims. However, he is cutting 1,500 CBSA positions. This is counterproductive to an accelerated refugee processing time, because they're the intelligence gatherers. They're on the front line and meet the people when they come in. So how does he expect to expedite and accelerate the process if on the one hand he takes away the very officers who are supposed to help with the processing?

**The Chair:** Thank you, Ms. Taub. We will have to move on.

Ms. Des Rosiers, you have up to 10 minutes.

[*Translation*]

**Ms. Nathalie Des Rosiers (General Counsel, Canadian Civil Liberties Association):** Thank you very much, Mr. Chair.

The Canadian Civil Liberties Union has been in existence since 1964 and continues to work to protect civil liberties in Canada. It is

in that context that the association comes before you today. We certainly appreciate the opportunity to share our concerns with the committee.

My presentation comes in two parts. First, I want to point out some constitutional problems with the bill and I will speak to three points in that regard. Clearly, the association supports the idea of improving the refugee definition process. We really support that approach, as well as putting human smugglers into the criminal justice system. But, in our opinion, if we try to do that with this bill, we will be going too far and we will cause major constitutional problems for Canada. From that point of view, therefore, the bill must be revised.

In the second part of my presentation, I am going to invite you to reflect on your role as parliamentarians as you study this bill.

• (1645)

[*English*]

First, there are three things that I want to suggest, and here I obviously speak from a civil libertarian position. There are three things in this bill that transform some constitutional law concepts. I will invite you to worry a little bit about this, because in doing so and achieving some good objectives, there may be some drawbacks that will affect all Canadians.

The first one is what I describe as the mandatory detention of group-designated people. The three things that I want to say here are these. First, this is a group detention; it's a group assessment. In Canada, we tend not to agree with group assessment. Mass arrests are wrong. Mass detention are wrong. I think it's important to view this as going against some of the fundamental issues that we have in Canada, which is that when you are going to make a decision that is going to deprive someone of his or her liberty—and here I will go back to Mr. Collacott's argument—you must have an individual assessment as to whether there is a good reason to do so and whether indeed the person poses a risk. If you read in our brief the description of what the law is on arbitrary detention, you will see that it requires an individual assessment of whether the person has committed or is connected to crime. This bill doesn't do that.

The reasons the minister will be able to designate a group have to do with administrative convenience or administrative demands, or because he or she suspects that maybe there will be some smuggling. But it's never connected to the individual members of the group. That will be a flaw in constitutional terms, in terms of arbitrary detention. There is group detention and group assessment of blame that is inappropriate.

The second one is that this detention is without judicial supervision. There is no possibility of judicial validating or vetting of the detention for 12 months. This is a denial of the right to habeas corpus. You cannot do this. This is dangerous. It's dangerous because if we start doing this and saying, this group does not have the right to habeas corpus and this group is denied the possibility of having the legality of their detention vetted by a judge, I think we run the risk—not that this government will do it—that other governments may decide to designate a group and deny them the right to habeas corpus and the right to have their detentions validated.

In its Charkaoui decision, as you will read in our brief, the court said that 120 days of detention for people suspected of terrorism without judicial review is wrong and unconstitutional. There is no doubt that for asylum seekers where there is no evidence of a link to criminal activity, this will be viewed as unconstitutional.

I also want to provide the committee with the following reflection. If there are administrative problems, and there will be, the following is what the act currently says. I think it's important to say that it is possible now. Our current immigration law doesn't have mandatory detention, but a person must be seen by an independent decision-maker within 48 hours of being detained to determine whether there is a need to keep them locked up. And in a way, I think we are certainly ensuring that people will show up for their hearing, because they can be detained if there's a risk that they will not show up, or if they present a risk to national security and if their identity cannot be ascertained. So the current provisions provide for the administrative necessities that are now in fashion.

*Mon deuxième point*, my second point, is to urge you as parliamentarians to reflect on this bill. Just to complete the idea, there's also a discriminatory aspect to this. Not only will people who are in the designated group be detained for 12 months without judicial review, but thereafter their ability to seek permanent residence will also be delayed, even after they have been found to be legitimate refugees.

In my view, there's no reason in Canada to make distinctions between some refugees and others. Once they have received refugee status, they should be treated the same; they should have the same ability to become permanent residents. The reason is that demanding permanent residency is part of integration into Canada. Once they are recognized as refugees, they should be treated equally.

In my view, this will raise some issues concerning a violation of section 15 of the charter, and I think we should be worried about that as well.

I'm speaking to you as parliamentarians. Why do we think that you as parliamentarians should worry about this bill? This is a bill in which I think there is a large expansion of executive powers.

I think it's incumbent upon parliamentarians to recognize what their role is here. It's to ensure that this is not going too far in preventing the executive from being sufficiently bound. In a way, the executive now decides that there will not be judicial review, and then under this bill has very little parliamentary oversight as well. I urge you to reflect on what your role is as parliamentarians in evaluating this.

•(1650)

*Le deuxième point* that I want to make on the role of parliamentarians here is that we all know that at times it is easy for xenophobic feelings to arise. I am pretty sure that there is no minister in this government who would order mandatory detention of poor souls arriving from desperate countries, but this *projet de loi*, this bill, is not here only for now; it will be here forever. Indeed, once you create the ability.... What the minister says is "I may not use this bill, but I want it in my back pocket just in case". But this possibility of designating a group could be done wrongly in the future.

I was going to mention that at times Canada has done some nasty things, some things that we're not proud of. I want to conclude on this and say that when we imposed the head tax on Chinese immigrants; when we turned away the ship the *Komagata Maru* in 1914 and 376 Indians died; when we refused access to the Afro-American farmers during the recession; when we incarcerated the Japanese and the Ukrainians; when we denied entry to the *St. Louis* in 1939 and 900 Jewish people were returned to Europe, these decisions were popular. My fear is that decades later we unveil commemorative plaques, we offer apologies, and sometimes we pay damages and try to alleviate the pain, but it's too late: people have died.

I urge you to think about the possibility that there may be decisions taken in the future to incarcerate people for 12 months and to deport them in a context in which, later on, we will feel very ashamed of what we have done.

It's not appropriate to leave all of these decisions to a minister. It creates too much danger of this power being abused. I urge you to consider this possibility.

Merci.

**The Chair:** Thank you very much.

You should get out of law and become a politician. You're very persuasive.

**Ms. Nathalie Des Rosiers:** Invite me.

**Ms. Jinny Jogindera Sims:** You can be persuaded?

**The Chair:** I didn't say that. I'm the chairman; I'm unbiased.

We now go to the questions.

Mr. Opitz, please.

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

First, to Ms. Taub, we have some similarities in our backgrounds. My parents came here at the end of the Second World War. My dad spent a significant amount of time in a gulag and my mom was taken to Nazi Germany for forced labour. When they came to this country, it was a very different time. They had two-year contracts and had to work their way through before they were allowed to integrate into Canadian society in the way they wanted to integrate, but they did. They worked hard and they got through all of that.

With respect to your parents, we've been going through a lot of commemorations recently, and the Holocaust is one of them. It's certainly an important factor in a lot of our decision-making in some of those areas, as Ms. Des Rosiers has pointed out.

What impact do you think bogus refugees have on genuine refugees who then have to wait longer? Does it make sense that 25% of refugee claims in Canada come from the EU? That in fact, is more than the number of claims from Africa and Asia. What are your comments on that?

• (1655)

**Ms. Julie Taub:** I am not one of the drafters of the current Bill C-31. Had I been, I would have suggested a third category: safe countries of origin, where no claims would be considered. I would have included all the European Union countries; the United States; New Zealand; Australia; Switzerland; and Norway, which is not part of the European Union, and would not even consider claims from those countries. By the way, Switzerland has that policy on its books, as do most of the European countries, regarding these safe countries of origin. They process them in two days to three weeks.

I read the list of countries whose citizens I have represented before the refugee board. You may have noted that none of those countries appears on my list. I won't represent people from them because I don't believe they are genuine refugee claimants.

Again, and I don't know how often I should reiterate this, the European Union has 27 countries. We have 10 provinces and 3 territories. Anybody from Quebec can still go and live and work anywhere in Canada. Anybody from one of those 27 countries in the European Union has a choice of 26 other countries to go and live and work.

And discrimination is not persecution.

**Mr. Ted Opitz:** Agreed.

Someone who is a genuine refugee and fears returning to their home country, if they withdraw or abandon their claim and willingly return to their country of origin, what would you say is the impact of that?

**Ms. Julie Taub:** They're obviously not genuine refugees. There's this whole issue of people—including some of my clients, which I've been quite distressed to learn afterwards—who after being granted refugee status, get a travel document to return to their home countries from whence they fled in fear of their lives. When any of my successful refugee claimants have come into my office and asked me to help them fill out an application for a travel document, I ask them where they want to go. If it's back to the country they left, I say, "Are you crazy? I thought you left in fear for your life. Why in the world would you want to go back there?"

After all my years of experience, with anybody who returns to their country of origin which they left in fear, I question the validity of their original claim—unless there has been a drastic change of conditions in the country, where it's now safe to go. If we're talking about within a few months or even a year or two afterwards and nothing much has changed in their home country and they still want to go back, I question the validity of their original claim.

**Mr. Ted Opitz:** You did make a comment earlier on about asylum shoppers, as did Mr. Collacott.

CBSA officers get some pretty interesting answers, as we found out earlier, responses like a person saying they could get a free salary for coming to Canada.

Have you been privy to any of those types of questions or answers?

**Ms. Julie Taub:** I've had a few calls from abroad, mostly from young men from some Middle East countries. They ask me about refugee claims. They say that they'll be arriving next month and can I take their case. I tell them that they can't just come in but that they need a visa. They'll say, "Oh, I'm coming as an international student and then I'm going to make a refugee claim". I try to explain that if they are coming as an international student, they've got stability here. I tell them the process, that they need to finish their degree, to work, and then they can immigrate. They say, "Oh, no, I can't afford it," or whatever.

I think there's quite a bit of abuse going on, just based on calls I've had and the people whom I have met but whose cases I don't take, and clients whom I've represented, who then come back and ask for travel documents. I know the system inside out.

**Mr. Ted Opitz:** People who go to school here for three years who, but depending on trade, have the Canadian experience class that they can sometimes rely on to do that.

**Ms. Julie Taub:** Oh, absolutely. There's the Canadian experience class, skilled workers if there's a certain profession, and then there are the low-skilled workers. There are many ways to immigrate to Canada legitimately. I feel that too many people are using the refugee process as a parallel immigration process.

• (1700)

**Mr. Ted Opitz:** I saw that you mentioned 28 days as sufficient time to fill out the initial paperwork.

**Ms. Julie Taub:** Yes. I've never missed a deadline among the hundreds and hundreds I've had—and we're not looking at 28 days here.

When somebody is leaving their country, they have that intention. They're leaving, they're fearing for their lives. If they come from certain countries, such as Rwanda, Somalia, Eritrea, often they come without paperwork. But we all know the conditions of those countries. We can't even expect them to get the necessary paperwork. Nobody will question a woman who is fleeing a forced marriage or genital mutilation, or who wants to protect her daughter from genital mutilation. The board doesn't require paperwork. The documentary evidence is more than sufficient.

**Mr. Ted Opitz:** [*Inaudible—Editor*]

**The Chair:** Thank you, sir.

I'll just remind colleagues that this panel will end at 5:20.

Ms. Sitsabaiesan.

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

Ms. Des Rosiers, as you know, in 2007 the Supreme Court ruled in *Charkaoui v. Canada* that detention without review for 120 days breaches section 9, which is arbitrary detention, and paragraph 10(c), legal rights upon arrest or detention, of the charter.

Do you not think that this new regime, which imposes a delay more than three times as long as the one struck down in 2007, may also be ruled unconstitutional?

**Ms. Nathalie Des Rosiers:** I think that was my submission, that on its face, 12 months without judicial review indeed contravenes what the Supreme Court said in 2007. There is no reason to justify this change. In my view, on its face it's going to be unconstitutional. Indeed, I think as parliamentarians it's not a good idea for you to pass statutes that are, on their face, unconstitutional in the theory that maybe nobody will challenge them, or the power will not be used. That's not appropriate: We owe it to the rule of law to have sections that comply with the charter. We also owe it to other countries around the world that look to us to have statutes that make sense, that are appropriate, and that do the right balancing between different interests to ensure that indeed they comply with the charter.

**Ms. Rathika Sitsabaiesan:** Thank you.

I have a question about mandatory detention. So a detention regime, as I keep calling it, for designated foreign nationals, as people will be called, provided by Bill C-31 has attracted considerable attention, because it is a violation of rights incompatible with the Canadian charter and, of course, with our international obligations.

What is your opinion on this, and what alternative would you recommend for dealing with mass migrant arrivals?

**Ms. Nathalie Des Rosiers:** Certainly I think the current statute, the current way in which we deal with group arrivals, is not inappropriate. In the statute it does say, to the extent there's some difficulty in doing identity checks and so on, people can be detained for short periods of time, but at least there's a guarantee that indeed a judge is there to make sure the process works well.

We should value this, and we should value this profoundly, because that's what constitutional law is all about. That's the protection we all have, that if indeed we are found to be detained, we're not at the mercy, like this bill presents, or completely at the mercy of the minister deciding, "Oh, yes, these are exceptional circumstances and I decide that you can leave", even if he or she does the right thing.

I think there is a symbolic flaw here. There's a symbolic flaw because it does say to people that in Canada you're completely at the mercy of the minister deciding what happens to you. That's not what we're all about. We're a society based on the rule of law, not on discretionary exercises at the whim of a minister.

So to me, I react by looking at this and saying, "Will I want this to be part of Canadian law books?". No. I think there are some dangers in terms of the way it transforms our constitutional law, let alone all the problems it may pose for the individuals who are affected. That's

serious enough, but there certainly are some problems in the way in which our constitutional law will be transformed.

• (1705)

**Ms. Rathika Sitsabaiesan:** So my understanding is that the current system—

**Ms. Nathalie Des Rosiers:** Is enough—

**Ms. Rathika Sitsabaiesan:** —we have actually works.

**Ms. Nathalie Des Rosiers:** I think, certainly not in terms of... There are some improvements that could be made. More people could be processed, and certainly you want to ensure that there is more speed in the system. I have no problem with some of the parts of it, but on this, I think there is absolutely no necessity for this mandatory detention for 12 months of people arriving in Canada—absolutely not.

**Ms. Rathika Sitsabaiesan:** And then there's all of the power sitting in the one seat, that of the minister, which once again is, in your opinion...?

**Ms. Nathalie Des Rosiers:** I think it is a flaw. I think it's against the nature of what we should expect in a parliamentary democracy.

**Ms. Rathika Sitsabaiesan:** Thank you.

We've heard about Australia from earlier witnesses, from the minister as well, and from ministry staff earlier today. So I'll ask you about some of the stuff that's been happening there. We've seen the statistics from Australia showing that mandatory detention did not discourage asylum seekers from going there. Is there any explanation for why mandatory detention did not work there?

**Ms. Nathalie Des Rosiers:** Well, in our view, it doesn't matter whether it works or not, because it is inappropriate to do it. It's an insult to all Canadians. Because the minute you start deciding that there could be mandatory detention of a group, which group will be next? That's the reason that I ask you to think about this seriously. I have absolute confidence that there is no minister in this government who would do it, but some other governments could do it.

What's to prevent another government somewhere else from saying that it designates a group and puts its members in mandatory detention for 12 months, and from saying that "Canada can do it, so why not us?" I think it's dangerous and inappropriate.

So irrespective of its effectiveness—which is debated—I'm not going to get into that debate. I think it's wrong.

**Ms. Rathika Sitsabaiesan:** So this bill basically opens the door for a future government to be xenophobic towards any group of people. Is that your understanding as well?

**Ms. Nathalie Des Rosiers:** Well, I think that's certainly one possibility. It's the duty of parliamentarians to prevent this from ever occurring. It has occurred before. It could occur again. I urge you to prevent this, to protect us, and to protect our reputation for the future.

**Ms. Rathika Sitsabaiesan:** Thank you.

Do I have more time, Mr. Chair?

**The Chair:** You have about 30 seconds.

**Ms. Rathika Sitsabaiesan:** Okay.

**Mr. Kevin Lamoureux:** I'll take it if you like.

**Voices:** Oh, oh!

**Ms. Rathika Sitsabaiesan:** Did you want to continue for a fast 30 seconds?

I'll pass it on to Madame Groguhé later on.

**The Chair:** Ms. Des Rosiers, I think you have something to say.

**Ms. Nathalie Des Rosiers:** I think it's also important to recognize that it's not true that refugees have not been good immigrants in Canada. They have contributed a lot to Canada. We should be proud to have accepted refugees in Canada. I think this is important to recognize. This is not about trying to belittle the heritage they have contributed. Also, I worry sometimes about the tone.

**The Chair:** Thank you.

Mr. Lamoureux.

**Mr. Kevin Lamoureux:** Thank you.

I really do agree with your last comment. There have been actions taken by this particular minister and this government that I think have raised a concern in regard to that very issue, whether it's standing on the back of a ship, which I made reference to earlier in question period, or coming up with this whole detention idea.

One of the things that we learned today—and I posed the question today in question period—is that in fact the current system of detention is actually working. It has proven itself; it has worked.

Mr. Dykstra has asked the Liberal Party to come up with some ideas and amendments, and we're suggesting that this whole section be amended out of the current legislation.

Is it safe for me to assume that you would be very supportive of taking out that whole section about detention. You fully believe that the current system is doing what it needs to do?

**Ms. Nathalie Des Rosiers:** I think there are certainly some ways in which the system has been applied at times that we would disagree with. But on the whole, I think that it does at least satisfy the interests of the minister.

This section that imposes mandatory detention for 12 months without judicial review is wrong. It should be removed from this bill. In my view, it is constitutionally wrong. It's wrong in international law. It's wrong even for a constitutional democracy.

**Mr. Kevin Lamoureux:** Well, we agree on that point. The minister says he's open to ideas.

**Ms. Nathalie Des Rosiers:** Okay. That's one.

**Mr. Kevin Lamoureux:** We'll find out whether or not he's actually open to amendments, because the Canada Border Services Agency is the group that said it has actually been working.

There are the irregular arrivals and then there's the safe country list. These are two new initiatives in which the minister himself

wants to make those determinations. These are outside the safe country list that we passed just a couple years ago, where there was a consensus that there be an advisory group, and that this advisory group be the one that would recommend which countries would be put on the safe country list.

I'm wondering if you can provide a comment as to why it's important that decision-making not be left with the minister but with professionals, such as an advisory committee.

● (1710)

**Ms. Nathalie Des Rosiers:** In our view, I think we have always taken the position that it's dangerous to politicize too much this safe country list. An impartial advisory group that makes recommendations is a good idea. Why prevent the minister from getting good advice prior to making a decision?

It seems to me that it's reassuring to Canadians to know that indeed it's not because some country is putting pressure for commercial or other interests to be on or off the list. It really should be because there is independent advice that says indeed this is or isn't a safe country.

I think there are some dangers in having safe countries. We should not presume that all countries never persecute somebody. We are certainly happy that there could be some distinctions, but we have to remember that we cannot say that no country will ever persecute its own residents in the future. Indeed, one of the ideas internationally is that you are entitled to an individual assessment of whether or not your claim is valid. Again, that's very compatible with what Canada is all about, which is to have an individual assessment of someone's claim.

My point, just to clarify this, is why not have an independent assessment? It seems to me that it would certainly at least remove the likelihood that somebody may worry. It's enough to worry about the legitimacy of the decision.

**Mr. Kevin Lamoureux:** That's another good amendment that could likely come forward.

The other issue is the irregular arrival. Is there anything that you would like to recommend to the committee that could put some sort of a check in place to deal with the concerns in regard to this whole labelling of irregular arrivals, or is it just a bad idea?

**Ms. Nathalie Des Rosiers:** It seems to me the irregular arrivals make no sense in the long run. If you look at what the bill says, it says two things about irregular arrivals. First is that they are going to be detained mandatorily. I have said several times that I think that's wrong for many reasons. Second is that it creates a different category of refugee, even after they have obtained their refugee status.

Once you have obtained your refugee status, I think Canada, on its part, deserves your being given the full chance to contribute right away to its economy. Therefore, you should be able to apply for permanent residency the same way as any other refugee. To me, this categorization in itself is not sustainable.

Those are my suggestions.

**The Chair:** Thank you, Madame Des Rosiers.

Mr. Menegakis.

**Mr. Costas Menegakis:** Thank you, Mr. Chair. I'd like to thank our witnesses for appearing before us today.

Ms. Taub, I confess, I was deeply touched by your personal story. Thank you for sharing that with us. It is a testament to the great country in which we live, in that we have before us the offspring, if you will, of a Holocaust survivor, and the good work that you are doing. It's wonderful that you have dedicated your life to making Canada a better place to live as well. Thank you for being here with us.

On Radio Canada International you said:

I'm an immigration and refugee lawyer in Ottawa, and a former member of the Immigration and Refugee Board. I can tell you from theory and practice that the current refugee system is very flawed, and cumbersome, and definitely needs an overhaul. It takes up to two years to have a claimant have his hearing. And there are far too many bogus claims that clog up the system, and use very expensive resources at a cost to Canadian taxpayers.

I have a number of questions for you. Obviously, the ministry, the minister, and the government have a different opinion as to the bill's compliance with the Canadian Charter of Rights and Freedoms. I'd like to hear your opinion. Do you agree with Madame Des Rosiers' view that the bill is not charter compliant?

**Ms. Julie Taub:** Regarding the mandatory detentions and designated groups, I think there was confusion created, because people coming from designated countries are not the same as people coming through irregular arrival, that is, through smuggling. So if someone didn't know the bill in detail they'd be confused and think that if somebody came from the United States, they would be subject to detention. That is not the case.

Mandatory detention has absolutely nothing to do with people coming from designated countries of origin. Mandatory detention refers to people who have been smuggled in. It's completely different. I just want to clarify that so there's no confusion that if somebody comes from Hungary, France, New Zealand, Australia, or Norway, they will be subject to mandatory detention. Those are designated safe countries or designated countries of origin.

As for mandatory detention for one year, I don't see how that could even happen. He says he's going to accelerate the cases and they're supposed to be finished within a maximum of 216 days. So there won't even be a mandatory detention of 365 days. Unless I'm completely wrong, I don't believe what's in the bill means that every single person is going to be stuck in jail for one year. I think they'll probably be looking mostly at the smugglers themselves. If people do not destroy their documents upon arriving or en route, it will be easy for the board to determine whom the smugglers are and who are genuinely seeking claims. It doesn't help when everybody destroys their documents. I think that detention is perhaps necessary at that point, when you come without documents. How else are you going to find out who has arrived at your borders?

What is constitutional and what is not constitutional? I'm not a constitutional lawyer. However, at some point Canada has to determine who's running the country: appointed judges who are not elected and not responsible to people, or Parliament? I'm afraid that we have shifted away from a true democracy, where our laws are created by Parliament but determined by the a supreme court or federal court whether these should work or not. Those people are not

elected. They're appointed and can remain in their judicial capacity until the age of 75, and are answerable and responsible to no one.

Sorry, did you ask me another question that I missed?

• (1715)

**Mr. Costas Menegakis:** I have more questions, so I'll go on if I may.

**Ms. Julie Taub:** Okay.

**Mr. Costas Menegakis:** With the new measures in Bill C-31, the time to finalize a refugee claim would drop from the current 1,038 days to 45 days for claimants from designated countries of origin, or 216 days for all other claimants. Surely that is a big advantage for the folks who actually need that assistance from us.

**Ms. Julie Taub:** Absolutely.

**Mr. Costas Menegakis:** Can you give us some theoretical and practical examples of how and why the current system is flawed?

**Ms. Julie Taub:** I had a woman from Djibouti whose claim was from the fall of 2009. We just had her claim heard in February and she was accepted. But she called me regularly and I kept sending requests to Montreal to please schedule her claim from 2009. I kept assuring her, "No one will deport you and kick you out of the country. You're a refugee claimant. You are safe and your children are safe". But she was literally on the verge of a nervous breakdown until she had her hearing and was accepted.

It shouldn't be like that. Everybody can agree that there are clearly refugee-producing countries. People from those countries shouldn't have to wait two or three years to have their claims heard. So I'm very happy that they're going to accelerate the processing, but I'm not happy that they're cutting back CBSA positions. They are the people who help get the paperwork and do the research and background checks on the claimants. So it doesn't make sense to me.

• (1720)

**Mr. Costas Menegakis:** Do I have any time, sir?

**The Chair:** You have time for a quick one.

**Mr. Costas Menegakis:** You made a valid point when you used the European Union example of 27 countries that people can go to. Why do you think that people seek Canada for asylum rather than going to a country closer to them?

**Ms. Julie Taub:** Well, I don't know.

I know that if they want to go and live and work in another EU country, that's exactly what they have to do—live and work. They are not entitled to welfare when they arrive in one of the 26 other countries, whereas when they arrive in Canada they are not obliged to live and work. They can work. They can get a work permit within two months.

I'd say that 95% of my clients have always gotten their work permits, have been working until the time of their hearing, and have fully adjusted to Canadian life.

I suspect that might be one of the reasons, because people can come here, live and not work—

**The Chair:** Thank you.

**Ms. Julie Taub:** —and get subsidized housing and social assistance.

**The Chair:** Thank you, Ms. Taub, Madame Des Rosiers, and Ms. Mendelsohn Aviv. Thank you all three of you for coming and making your presentations to us today. It's been helpful to the committee.

We will suspend for a few moments.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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**The Chair:** We'll call the meeting to order.

This meeting will conclude at 6:15, when it's expected that bells will ring to summon us to the House of Commons to vote.

We have with us two witnesses from the Ontario Council of Agencies Serving Immigrants: Debbie Douglas, executive director, and Francisco Rico-Martinez, regional director for Toronto.

Good afternoon to you. One of you will have up to 10 minutes, or however you want to split that.

We have, from the Ministry of Attorney General of Ontario, Toni Skarica, crown attorney. He used to be from Hamilton.

Are you still from Hamilton?

**Mr. Toni Skarica (Crown Attorney, Ministry of the Attorney General of Ontario):** Yes, I still am.

**The Chair:** Mr. Skarica, I might as well tell my colleagues that we have something in common. We used to be members of the provincial parliament in Toronto when we were much younger.

Welcome to the committee, Toni.

**Mr. Toni Skarica:** It's nice to see you again, David.

**Mr. Chungsen Leung (Willowdale, CPC):** You're still young.

• (1725)

**The Chair:** Yes.

Who wants to go first?

**Ms. Debbie Douglas (Executive Director, Ontario Council of Agencies Serving Immigrants (OCASI)):** I'll begin for OCASI.

Thank you for having us.

The Ontario Council of Agencies Serving Immigrants, better known as OCASI, is the provincial umbrella group for agencies that work with immigrant and refugee communities here in Ontario.

OCASI and our member agencies are very concerned about Bill C-31. Let me start off by saying that we're actually asking this committee to recommend that the bill be withdrawn and that we move forward with Bill C-11, which is scheduled for implementation at the end of June of this year.

Very quickly, we are concerned that the bill would create a multiple-tier system of refugee protection in Canada, which we

believe could result in some claimants being denied the right to appeal. It makes refugee protection in Canada dangerously vulnerable to political whims, rather than ensuring a fair and independent decision about who is a refugee. It subjects some refugees to different and harsh treatment based on the country of origin, mode of arrival, and whether or not the person has citizenship in Canada, as it has to do with the revocation of permanent residency.

I just want to set the stage a bit in terms of how we have been addressing issues of refugees and asylum seekers before I pass it on to Francisco.

In 2010, Canada accepted about 24,000 refugees in all classes. This was about 11,000 fewer than the 35,000 who were accepted in 2005. In 2005, refugees in all classes accepted in Canada were about 13% of all permanent resident arrivals. In 2010, they were down to 8% of those arrivals, a drop of almost 5%.

In 2005, the number of refugee claimants present in the country constituted approximately 0.3% of the Canadian population. Five years later, in 2010, the percentage of refugees compared to the Canadian population was slightly lower at 0.28%. In 2010, we accepted 3,400 fewer claimants than five years earlier, in 2005. At the same time, the number of people forcibly displaced in countries around the world has been growing.

We believe, and we are deeply concerned, that Bill C-31 will reduce even further the number of individuals who seek to enter Canada in search of asylum.

The minister has said that Canada welcomes more resettled refugees per capita than any other country. Meanwhile, according to the UNHCR "Global Trends" report of 2010 that was released last year, 80% of the world's refugees are in the global south, in the world's poorest countries such as Pakistan and the Congo. The report found that roughly 43.7 million people are displaced worldwide. Of that number, 27.5 million people are displaced within their own country due to conflict.

In this global context, Canada's involvement in resettling refugees, while admirable—and I don't think any of us around this table are arguing about that—doesn't quite measure up to the commitment of other countries in the world. According to the same UNHCR report, in 2010 Canada had 4.2 refugees per U.S. dollar of its per capita GDP compared to Pakistan at 709, Congo at 475, Kenya at 247, and Chad at 224. The comparison becomes more stark when one considers the fact that Canada's GDP per capita is considerably higher than that in the countries named.

We're also deeply concerned about the growing anti-refugee sentiment in Canada and the extent to which this could be exacerbated by government messaging about the bill. I heard some of the language used earlier today while I was listening to some of the other witnesses makes their presentations and to the question and answer period. Messages that characterize asylum seekers in stereotypically hurtful ways, suggesting that they are bogus and are a drain on Canadian society, can have a harmful effect. We are also deeply troubled by the misperception that these measures are necessary because Canada is facing supposed floods of refugees. This messaging contributes to increased intolerance towards refugees and has a harmful impact on their resettlement opportunities in Canada.

While we believe that most of the measures are quite problematic, let me just concentrate on two pieces and then I promise I'll shut up.

• (1730)

First is shorter time limits. I know that the previous witnesses spent some time on this topic, but we are particularly concerned that the shorter time limits will pose additional difficulties for particular claimants. We are particularly concerned, as a council, with lesbians, gays, and trans folk, as well as women fleeing domestic violence, who often need to develop some sort of trust before they will disclose or “come out”, as we say here in North America, about their sexual orientation or their search around gender identity issues. We believe this will present increasing difficulties for them in having their claim together within the 15 days proposed in this bill.

For me, this is also tied to the safe countries list. I won't go on and on about the safe countries list. You've heard many arguments about the ongoing concerns. But we absolutely know that in countries that Canada has deemed to be democratic, and countries with whom we may have trade agreements, and countries with whom we work closely outside the EU—and you've all heard how safe the EU is for particular groups of people—particular groups still face severe discrimination. This discrimination at times not only leads to severe physical abuse, but also at times to death. Even here in the Americas we have examples of this.

One of the stories that I want to share just briefly, which is about four years old, is about a young Mexican woman whose claim was refused. She was sent back and was killed. Unfortunately, there is a more recent case that came up, the case of Veronica Castro, also from Mexico. Her claim was denied. A year before she was deported she was saying to friends that the decision was a life and death one for her if she were to be sent back, and she was hoping for their prayers. She wrote to one of her friends that her deportation was a matter of life or death, and said: “I'm shaking and terrified every time I think about my deportation. I am really scared”. Thirty-three days later, after being deported back to Mexico, on January 12, 2012, she was murdered.

So those are the kinds of stories that we know and that we are concerned about if we were to move forward, as a country, to adopt this bill.

**Mr. Francisco Rico-Martinez (Regional Director, Toronto, Ontario Council of Agencies Serving Immigrants (OCASI)):** We have more than 200 agency members of OCASI across Ontario. They work with refugees and immigrants. We are the people who

deal with the refugees and immigrants who stay here for more than a thousand days. They go to different refugee hearings and find a lawyer and whatever. We are very concerned about the people who are already in the system.

Basically, Immigration Canada says it has around 40,000 applications made on humanitarian and compassionate grounds that are still in the system without any decision. The IRB has said that the backlog of undecided cases is 40,000 as well. In this case, we have many applications for PRRA that haven't been decided. We believe there are around 100,000 people who are affected by this particular backlog, and we are here to ask if you could consider a jubilee program for the people who are in the backlog, because they have been waiting and waiting for this change.

We were advised that the law was going to be changed in December 2011. It didn't happen. We were advised that the law was going to change in June 2009. It didn't happen. Why? Because now we have a new bill and that will move the implementation date, for many reasons, to maybe December or later. So in that case, we want to ask for a program to help the people who are already here working

**The Chair:** Could you conclude, sir. Thank you.

**Mr. Francisco Rico-Martinez:** —using the criteria of economic integration, social ties to Canada, etc.

That's one of the things that we want you to consider.

• (1735)

**The Chair:** Thank you very much.

Now we have Mr. Skarica. We have two documents. One has been translated. It's called “Crown's Provable Statement of Facts—Excerpts”, and you all should have that. There's another document that is just....

You've been busy, Toni. You've been very busy. The problem is they're all in English.

Do I have unanimous consent that these can be distributed?

Agreed?

Maybe while they're distributing them, you could speak, sir. You have up to 10 minutes.

**Mr. Toni Skarica:** I'm the lead prosecutor in the largest human trafficking prosecution in the history of this country. We've convicted eight people so far of human trafficking and of participating in a criminal organization; we've convicted seven other members of various other offences; and another person is going to plead guilty to human trafficking and participating in criminal work tomorrow. That doubles all the convictions since the implementation of the human trafficking legislation in 2005.

I have call it the “invasion of evil”. The reason I've done that—and I've done it publicly many times, and I know that maybe some people think it's politically incorrect—is that the brutal truth is that an entire criminal organization that was active in Hungary came over to Canada unmolested and then set up shop here, and they've been working with their people in Hungary and have been doing it since at least 2008.

The first thing I'd like you to see is that the invasion of evil came in two waves. You have a chart to look at, annotated in yellow for the first wave.

Do you have the chart there? You need the chart.

**The Chair:** They're just in the process of distributing it. I don't know where it is and I don't know how to stop the clock.

**Mr. Toni Skarica:** Well, I'm just going to keep going, because I only have 10 minutes.

**The Chair:** Sure, keep going.

**Mr. Toni Skarica:** The chart shows you that there are five people whose names are highlighted in yellow. It's the first wave. Back when they came here in 1998, there was no visa required for Hungarian refugees. These people claimed refugee status. They had been indicted, nine months before they came, for extortion and fraud. If you want to talk about human trafficking, what is it? It's extortion and fraud. They came over here and nine months later warrants for their arrests were issued.

They made refugee claims. In a refugee claim, you have to say, "I have no outstanding charges". Well, for some reason, nobody ever found out about that. They made their refugee claims. CBSA is supposed to check for outstanding charges—you click on their outstanding charges, criminal records. None of those ever came up.

They became convention refugees; they became landed immigrants; one of them became a Canadian citizen. In fact, in this other document that you have, tab 10, 2005—I don't have time to go into it, but you can look at it later—you'll see that the Canadian and Hungarian authorities knew that Ferenc Domotor, the ringleader, had those outstanding charges and nothing was done about it. A year later, those charges were dropped in Hungary because of limitation problems.

So we had two serious criminals in our country who were landed immigrants, and one a Canadian citizen. Throughout this entire process, they were hiding in the open. Nobody ever seemed to find out that they were in fact wanted criminals from Hungary.

After they got their status, the next wave came over—and they're everybody else at the top part of the chart I am showing. Everybody else at the top part of this chart is one of their relatives, and every one of them, except one, when they came into the country or very shortly afterward, had outstanding charges. Some of them had criminal records, some of them had outstanding charges at the time, some of them had outstanding charges shortly thereafter. They clicked on the little form to say, we have no charges. All of them came here; nobody ever seemed to find out that they had these outstanding charges.

Once they were all here, they rented homes, and then they started recruiting victims from Hungary. They are all here, 19 of them—and there are lots more, but we know of 19 for sure—and they started making a lot of money. If you look at these photographs, in about 2009 they had \$600,000 homes in Ancaster. Here is a photograph of the ring leader. They lived a most lavish lifestyle. Meanwhile, their slaves were living downstairs in the beds shown in the photograph. Here is a photograph of the number two guy, and a picture of his \$600,000 house. Those are the two people who came originally.

How could all this happen? The lieutenant—a guy, to give you an example, called Ferenc Karadi—pleaded guilty for six years minus credits.

How much time do I have left? Five minutes?

• (1740)

**The Chair:** You have five and a half minutes.

**Mr. Toni Skarica:** Ferenc Karadi pleaded guilty, for six years minus credits.

He came over just like those other two. He said that he hadn't been charged with anything. He came into the country. CBSA did a check on him, and he came across as having no record.

After he was charged, I wanted to know what his background was in Hungary. If you go to this white document, the affidavit of Leap Jankovic, Exhibit "37", there was an international arrest warrant for him, and for his wife as well. But when we checked for his criminal record—there's no time to go into it now, but just trust me on this—it said that Ferenc Karadi had no criminal record.

A month later, the *Hamilton Spectator* went to Hungary and said, "What do you mean this guy has no criminal record? Not only has he been charged, he's been convicted. He's supposed to serve five years".

Hungary has this neat little procedure whereby they don't put you in jail right away. They tell you to come back a month later to go to jail. And guess what? They came here. And then when they came here, they said they had no criminal record. They checked it off. And somehow, when we check, there's no criminal record.

Three and a half years later, when he pleaded guilty—three and a half years—I still didn't know what his criminal status was. This document outlines his history. On November 6, 2008, he came to Pearson. He was a non-genuine visitor and was told to go away. He came back two weeks later, to Trudeau international airport, and got into the country. Then he said that he was a refugee. Ferenc Domotor, the leader, said that he would be responsible. The criminal history check, from March 18, 2009, said that here was no foreign criminal record. Ah, but on September 10, 2009, CBSA said that he was wanted in Hungary. What for? Well, they didn't know. On September 24, 2009, they said that he was wanted on a European arrest warrant. Then two years later, I'm told that he has no criminal record.

Well what is this criminal record? His criminal record is there. It is the document under tab G. In 1996, for receiving stolen goods, he was sentenced to one year imprisonment. In 2003, for bodily injury, he was sentenced to nine months imprisonment. For fraud, there was a fine. In 2009, it was blackmail and fraud. That's what human trafficking is. What did he get? He got almost five years. But he came here, and he was getting welfare. His wife's in the same boat.

How much time do I have?

**The Chair:** You have three minutes.

**Mr. Toni Skarica:** As for his wife, she's wanted too. She did the same thing as he did. She took off, and when she got here, there were international arrest warrants and so on and so forth. You can go through the documents. The Canadian authorities finally were told by Hungary in May 2010 and August 2010 and October 2010 that there were international arrest warrants for her. What was done? Nothing.

Finally, in 2011, we're doing a bail review on her husband, and I saw her walking around the court as a spectator. I went to the officer and say, "What is that? I thought there was an international arrest warrant for that person". He said that well, there was. I asked why we didn't arrest her? He said, " We can't. We need an extradition request from Hungary". We've never had one for any of these people.

I went to Deb Kerr, from CBSA. I asked, how could his wife be walking around in our country with international arrest warrants? She had been convicted of crimes—we think, but we don't know. So Deb Kerr did the check, and if you go to that same document, there it is. Yes, she had been convicted. She was supposed to serve two and a half years. It was the same procedure: Come back in a month to go to jail. Well, she came here.

What is the date of this document? It is November 21, 2011. She was in our country for three years, and we didn't know what her criminal record was.

This is not cheap. We also charged them with welfare fraud.

By the way, she was arrested shortly afterwards. I told Deb Kerr that we had to do something, and she finally found that the wife had, in fact, been convicted. She had made a little tick to say that she had never been convicted of anything, but then she was arrested on an immigration warrant. In addition, she and he were convicted of welfare fraud. He had to pay back \$12,000. We'll never see that again. She had to pay back \$36,000. We'll never see that again.

That's in fact cheap. More recently, we convicted these other two people. These people are criminals, and they've been on welfare since they got here, and they have been paid \$100,000. I had heard all this anecdotal evidence that these people had all kinds of money. They had cash and so on and so forth. So when this guy was fleeing the country the other way, a guy, and his mum, we had paid \$100,000 in welfare payments—I don't know how they do it, but these people are in Canada and they get genuine Hungarian passports—he had in his suitcase all these designer clothes. The labels were still on them. There's \$100 here and \$100 there. They cost us \$100,000.

We called evidence. Basically, these Hungarian refugees have a 98% failure rate. When it's all said and done, at that same rate, it costs \$500 million for just them. That's \$500 million at a time when there's no money for doctors in the hospitals and nurses and what have you.

• (1745)

**The Chair:** You're even more passionate now than you were years ago.

**Mr. Toni Skarica:** I can't believe this is happening to our country.

**The Chair:** Your time is up, I'm afraid.

Ms. James.

**Ms. Roxanne James:** Mr. Chair, [*Inaudible—Editor*]...up in the sixth hour of debate on this bill, so I thank you for that.

I'm listening to you, but I'm not shocked because I sit on this committee, so I've heard the stories. But I have to tell you that the constituents in my riding of Scarborough Centre are shocked at the fraud that goes on in our immigration and refugee system. You mentioned it very briefly with respect to welfare fraud. I think you said \$100,000, if I heard you correctly—

**Mr. Toni Skarica:** It was \$50,000 for them, but we've had over \$200,000 just for these people.

**Ms. Roxanne James:** It's a huge problem provincially in Ontario because bogus refugee claimants come here by fraudulent means and are here long enough to make their applications to receive our lucrative benefits, but then they don't necessarily show up for the first hearing and then, of course, it's hard to track these people down. I'm listening to your story and I'm shaking my head, not in shock but in agreement. It's very upsetting, especially with respect to the cost to Canadian taxpayers.

I'm just wondering if you could tell this committee why generally you accept the provisions in Bill C-31 and why you think they will make a huge improvement—

**Mr. Toni Skarica:** They'll make a huge difference because the evidence—I called it the Sztojkas—was that it cost us an average of \$50,000 for failed refugee claimants. For the Hungarians alone, that's \$500 million. That's the road to bankruptcy, in my opinion.

My druthers is that the legislation should be even stricter than it is. I think you're being very generous. One thing the legislation doesn't address is what's happening in Hungary. They haven't made any arrests over there. They're lying to us about their criminals. I've said it in court. They're trying to dump their criminals on us. Why is something not being done with Hungary? Why are there no extradition requests? There are all these recruiters out there. Why is it that not one person has been arrested over there?

We had people who were threatened that we had to get out of Hungary to preserve our prosecution, and the authorities there haven't done anything. How can that be a friendly nation?

**Ms. Roxanne James:** Thank you.

We're talking about countries in the European Union as being designated safe countries.

**Mr. Toni Skarica:** Yes.

**Ms. Roxanne James:** It's hard to believe—though again, it's not hard to believe from my viewpoint, because I'm on this committee and I know the statistics—that almost 25% of all refugee claimants are coming from the European Union, democratic countries from which you would not expect refugee claimants to be coming. Our last witness was quite passionate about legitimate refugees versus those shopping around for the best benefit package they can find.

Having said that, when we talk about the European Union, it's actually costing Canadian taxpayers \$170 million per year. I think that's a figure we need to mention more and more, because people cannot believe the cost to Canadian taxpayers.

What are your comments specifically about designating safe countries from where we really shouldn't be getting refugee claimants?

In fact, there are statistics for those who withdraw their applications or abandon them altogether. Some 95% from the European Union actually abandon those claims, but again, they are here long enough to start collecting the benefits.

**Mr. Toni Skarica:** Hungary is even higher at 97% to 98%. I think there should even be mechanisms to get them to leave more quickly. With that kind of failure rate, 98%, it's pretty well everybody who's coming in.

What I've heard is that the police investigated the Hungarians coming over, and asked why they were coming here and why they didn't go somewhere else, to Australia, for example. They're coming here because in Hungary they're told—and I don't know if it's true or not, but it's probably true—that we have the most generous welfare package for refugees in the world. That's why they're coming here, because they get the best deal here.

**Ms. Roxanne James:** This bill isn't just aimed at cracking down on bogus refugee claimants.

I know that another witness made a comment about asylum seekers, that it will be harmful to them if we think that all asylum seekers are bogus refugee claimants. But that's not the case and we all know that's not the case.

This bill is aimed at cracking down on those who are abusing our generosity. At the same time, it's also allowing Canada to accept legitimate, bona fide refugees into Canada much quicker than has been done in the past. Some of these people need our assistance. This bill aims to allow them to get that assistance and support much quicker.

What are your comments on that?

• (1750)

**Mr. Toni Skarica:** My own parents are refugees from World War II. Obviously, I'm here because ultimately Canada's a generous place. But there's a difference between being generous and being fools. When the world knows that you can come here and lie on a form and nothing's going to be done about it and you can get welfare for four or five years, that's not generosity: it's stupidity on the road to bankruptcy.

I welcome this bill. In fact, I think it's not strong enough in dealing with the bogus refugees.

**Ms. Roxanne James:** We actually had another person here on February 6. No, excuse me, it was not in this committee. But Richard Kurland, an immigration lawyer, has been quoted as saying, when referring to the minister, the following:

Finally someone recognized that the open wallet approach of the past, offering free education, free medicare, and a welfare cheque to anyone who touche[s] Canadian soil....

He said that finally we had someone who would take a look at that particular aspect.

**Mr. Toni Skarica:** Yes, they know the system. Virtually every one of those people you see at the top of this list knows that when you come to Canada, you go on welfare. In fact, the Karadis, for example, go to some doctor they have in Toronto, Dr. Sajo, who says, "You have a problem with diet." And they get an extra dietary allowance. They know right away how our system works and how you can maximize benefits.

**Ms. Roxanne James:** Can I just ask how much time I have left? Okay, I'm just going to keep talking.

When I think of Bill C-31, I think of it being in the best interests of Canada as a nation. I think it's in the best interests of the safety and security of the Canadian citizens and the people who are here in Canada. I also think it's in the best interests of Canadian taxpayers. And let's face it, they are the ones who are footing the bill for fraudulent claims. I also believe that this bill is in the best interests of legitimate refugees, bona fide refugees, who need Canada's help.

Would you agree with all of those statements?

**Mr. Toni Skarica:** Yes, I would agree.

**Ms. Roxanne James:** Can I ask you a question?

**Mr. Toni Skarica:** Yes, go ahead.

**Ms. Roxanne James:** Who is not going to like this bill?

**Mr. Toni Skarica:** These people, the people at the top of this list, are not going to like it.

**Ms. Roxanne James:** So it's in the best interests of everybody except for the people who are seeking to abuse our generosity.

**Mr. Toni Skarica:** Yes.

**Ms. Roxanne James:** Thank you very much.

**The Chair:** Thank you.

Madame Groguhé.

[Translation]

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

My thanks to the witnesses for joining us today.

During the debates on Bill C-31, we have heard on a number of occasions that asylum seekers are abusing Canada's generosity. What is your comment on that, Ms. Douglas?

[English]

**Ms. Debbie Douglas:** I think we generalize to the detriment of those bona fide refugees that we keep hearing about while we continue to talk about refugees as a group who are taking advantage of our system. But I think Francisco wanted to comment on this specifically.

**Mr. Francisco Rico-Martinez:** You have to check the percentage of refugee claimants in our criminal system. It's very low. The bill is not going to catch these people. Mr. Skarica is very passionate about it. Why? Because the refugee hearing will be in 30 days. There won't be enough time to do a criminal check of anything. This person could be accepted as a convention refugee very easily.

One of the problems he detected was that the RCMP, the CBSA, or whatever, don't do the checks that need to be done. Do you know what I mean? He is very clear about how Hungary is a safe haven for criminals in that particular sense. How are we going to deal with that situation here in 30 days? Maybe the person will be accepted. And we are going to have an issue if that person is accepted.

So the double-checks are important. That's why the shorter terms, when we have a system that has been proven not to work in many circumstances, are a problem.

**Ms. Debbie Douglas:** I should say that the latest statistics from the Ministry of Community and Social Services in Ontario do not bear out the fact that refugees and immigrants are overrepresented in our social assistance system. We can certainly take a look at those statistics.

• (1755)

[Translation]

**Mrs. Sadia Groguhé:** As a democratic country, we have made enormous progress in basic human rights. Earlier, one of our witnesses stressed the importance of a society being founded on the rule of law rather than on the power of any one person, the minister in this case.

Minister Kenney has said that democratic countries are safe countries that cannot produce refugees. Do you share that opinion? If not, can you give us examples that would demonstrate the opposite?

[English]

**Ms. Debbie Douglas:** One of the arguments we have been making is that there are people who belong to particular social groups who, even within democratic countries, are discriminated against and at times even killed. In particular, we are looking at lesbians and gays.

For example, I come from the Caribbean. Not to stereotype or generalize about Caribbean culture or practices, but we do know that there are a number of gays and lesbians from some Caribbean countries who have had to flee, including to Canada, for protection because of their sexual orientation. Will our minister deem those countries to be a democratic? Absolutely. They're part of the Organization of American States. We have very good trade relations with the Caribbean, as we should. But at the same time, we have to recognize that there are particular groups of people who need Canada's protection even when they are born and live in countries we deem to be democratic.

**Mr. Francisco Rico-Martinez:** And on the other hand, one of the main problems we have with the modification of the designated country of origin is the process with which that country will be determined. In the original Bill C-11, when it was passed, they were talking about refugee rights, the standards of rights or the standards of violations in that particular country, and a specialized team was going to analyze that particular concept of the evolution of the human rights issues in that particular country.

Now, that situation is gone, and we are only going to use the statistics prepared in Canada, such as the rate of acceptance, withdrawal, and 30 cases in particular time. Those are statistics in Canada. Why don't we go back to the idea of the specialized team that would take a look at the human rights levels or issues going on in that country, and provide a report on that? This would work better.

**The Chair:** Madame Groguhé, you have two minutes.

[Translation]

**Mrs. Sadia Groguhé:** My final question deals with detention, especially the detention of children.

We know how important it is to respect the overarching rights of children. In your view, how can the specific application of the provisions of Bill C-31 preserve those rights? Is it possible?

[English]

**Ms. Debbie Douglas:** But it won't. Bill C-31 gives parents the option of no choice. They can have their children detained with them, or they can give up their children to the state. As someone who is seeking asylum, being faced with a Sophie's choice, not at all to belittle the Holocaust, is a presupposition of no choice in terms of their children being detained.

One of the things that we have been taking a look at is what the past practices have shown us in terms of the mental health of young people who have been detained and/or removed from their parents.

These are some of the concerns that I think this committee needs to take into account when looking at mandatory detention, particularly the detention of children under the age of 16. Often, in Canada, we think of the age of adulthood as 18. Bill C-31 talks about children as 16 and under. That, in itself, is a problem.

**The Chair:** Thank you.

Mr. Lamoureux.

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

I did have a couple of questions I'd like to ask Mr. Skarica.

The Canada Border Services Agency made a presentation here earlier today. In essence, they gave a very clear indication that the current detention system seems to meet the needs. There's no problem in extending the detention of people who need to be kept in detention, who can be kept in detention. There's a certain protocol that has to be followed, but they definitely weren't complaining about it or saying that it needed to be changed.

I raise that issue because in your presentation you gave the impression that this is a good bill. I would recognize this bill as affecting many different policy aspects on refugees. Would you agree that if in fact the system isn't broken in regard to that detention component, we should be leaving that as is?

The current system appears to be working with regard to that. And given that whole concern regarding the charter and Constitution, is it constitutional to be making this change? In other words, do you think there is a need for some amendments to make the bill possibly better?

• (1800)

**Mr. Toni Skarica:** I think our system is totally broken.

This is organized crime. They were active over there, they came over here, and they have records and outstanding charges. They became landed immigrants, and so on and so forth. They continued with crime. To me, that's a system that's broken.

I don't know all the mechanics of the bill, but it seems to me that when people like Karadi, who's a vicious criminal—and you have the *Hamilton Spectator* report indicated that he's very feared in Hungary—came here, why shouldn't they be going into custody right away, and why shouldn't we know that he, in particular, was in fact about to serve a five-year sentence? Yet, he's coming here and then we're paying him welfare. So my impression from doing this prosecution is that our system is broken.

**Mr. Kevin Lamoureux:** Yes, but I guess part of the issue of going through the committee process is to look at ways in which we can improve the bill. The minister, himself, is saying, "Look, we're open to amendments to this bill." If the current system, and I'm just talking strictly of the detention component, seems to be working, would you be in favour of just changing that specific component?

**Mr. Toni Skarica:** I don't think it is working.

People who are fugitives from justice, like Karadi, who was in our country for four years and we were paying him, why shouldn't they go into detention?

I don't know all the mechanics of how it's going to work, but there's a prime candidate.

**Mr. Kevin Lamoureux:** Right. You provided the committee this list here. Can you just expand, in a Coles Notes version, on exactly what this list is?

**Mr. Toni Skarica:** In our prosecution, how many people have we got charged? We now have 15 convicted, two more charged, and we're looking for two.

The people at the top of the list are all the accused.

**Mr. Kevin Lamoureux:** And they're currently living in Canada?

**Mr. Toni Skarica:** Not any more, because we deported some of them. But at the time we laid these charges, the majority were living in Canada. In fact, they were all living in Canada, except for the one at the very top, Ferenc Domotor, who is in Hungary. The rest are in Canada. Fifteen now have been convicted and we've deported some of them. But even that doesn't work.

Do you see that name of Viktoria Nemes? She's Karadi's wife. She was convicted of welfare fraud. We gave her a deal. She did two months in custody and I said "Okay, let's give you a suspended sentence. You go to Hungary and serve your sentence." Well, you know what? Is she in Hungary right now? No, she got her suspended sentence. CBSA paid her ticket to Hungary, but it wasn't directly to Hungary. They sent her to Poland first, without an escort, so guess what happened when she got to Poland? She looked around, there was nobody there, and she walked off the plane. She not in Hungary. She's not serving her sentence.

**Mr. Kevin Lamoureux:** Where are the victims? You have a lot of

**Mr. Toni Skarica:** Some are in Hungary, most of them are in Canada. They're too afraid to go back.

**Mr. Kevin Lamoureux:** Ms. Douglas, could you provide some comment on the detention component? Do you have any thoughts on its being mandatory?

**Ms. Debbie Douglas:** As you heard from one of our earlier witnesses, the current law allows for detention so that we can determine folks' identity. We believe that mandatory detention of up to 12 months is excessive, given that it's applied to particular groups of folk deemed to be irregular arrivals. That the time period has been lessened doesn't minimize the fact that we have introduced something called mandatory detention without judicial review into our system, when existing policy allows us to detain folks whose identities we can't prove and whom we have concerns about.

• (1805)

**The Chair:** Thank you.

Mr. Dykstra, go ahead.

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

Most of my questions are for Mr. Skarica, but I also have a question for Mr. Rico-Martinez. He indicated that he agreed with Mr. Skarica that our laws weren't tough enough. And on the issue of going after the folks Mr. Skarica has pursued and achieved 15 convictions of, this bill doesn't go far enough.

Ms. Douglas, at the outset you said that the bill should just be withdrawn, and here I'm assuming that you just don't like the bill. To go through this bill, and listen to the person sitting beside you.... You talked about the need to identify these people when they come into the country, and biometrics is the one method we can do that with; it's almost foolproof. You've both said that you don't agree with the bill, but biometrics is right in here as a way to get to the issues that Mr. Skarica is speaking about.

We're talking about tougher penalties on ship owners, we're talking about deterring the abuse of the refugee system, the whole aspect of cracking down on human smugglers, using better tools to successfully prosecute and impose mandatory prison sentences on human smugglers.

Are you're saying, Mr. Rico-Martinez, that everything in this bill is not worth looking at?

**Mr. Francisco Rico-Martinez:** What I am saying is that we have Bill C-11, which addresses very similar issues in a more holistic way, and was approved by Parliament. We don't understand why we have to review this issue when there was an agreement among political parties. It was approved and it was a decent agreement.

**Mr. Rick Dykstra:** Let me answer that question for you, because the man sitting next to you is the exact reason, and the purposes he has mentioned are the exact reasons we had to bring this issue forward. For Bill C-11, I was parliamentary secretary. I sat in every single one of those meetings, and went through the whole process and the negotiations.

I was proud of what happened with respect to Bill C-11, and a lot of the aspects of Bill C-11 are going to move forward because of Bill C-31. So you don't like Bill C-31 and you like Bill C-11, but a lot of what's in Bill C-31 is Bill C-11. So there have to be things in here that you actually appreciate.

My point is that you've listened to what Mr. Skarica has had to say. You've heard about the 15 convictions he has achieved. You've heard from him—it's what he does for a living—that we have not been successful and that our system is broken.

We will not solve the problem of what we have in front of us — this problem right here—with Bill C-11. Bill C-11 will not solve this problem. You know what we'll end up doing if we only do Bill C-11? We'll just simply slap down visas on Hungary and hope that gets us around the issue, as we've had to do with Mexico and the Czech Republic.

That's not the process we want to use. If we're going to enter into agreements with the EU, if we're going to make sure that our economies are like-minded and that we become free-trading partners, we must have a system that the rest of the world believes is foolproof—at least in the efforts that it makes.

The system that we have now in this country, as Mr. Skarica has said, is broken. Simply disregarding Bill C-31 and accepting the fact that a majority of what's in Bill C-11 is good but doesn't go all the way to solving our issue.... I just have to state for the record that I obviously disagree with your position. I respect that you are here. I just wish you wouldn't have stated at the very outset that all of Bill C-31 wasn't good and should be removed.

Second, we need to get tougher to be able to identify the people Mr. Skarica was referring to, and biometrics is in this bill, and you've indicated that it's not worth pursuing—

**Ms. Debbie Douglas:** With all due respect, I think what we said was that we have Bill C-11, that Bill C-11 was a negotiated bill and that it addresses many of the concerns you have raised. To what—

**Mr. Rick Dykstra:** It doesn't address all of them, though—

**Ms. Debbie Douglas:** I'm sorry, but to what Mr. Skarica—

**Mr. Rick Dykstra:** It doesn't address all of them.

**Ms. Debbie Douglas:** —was speaking—

**The Chair:** We have a point of order.

Stop the clock, please.

[*Translation*]

**Mr. Alain Giguère:** A point of order, Mr. Chair.

I would appreciate it if we could listen to the answer rather than having the hon. member constantly interrupt the witness. I would like a modicum of order. When a question is asked, we have to let the witness answer it rather than debate it.

[*English*]

**Mr. Rick Dykstra:** It's not a debate—

**The Chair:** Well, it's a valid point, although I don't think it was a question.

Mr. Dykstra has the floor.

**Mr. Rick Dykstra:** I want to ask a couple questions of Mr. Skarica.

If we can get those done, Ms. Douglas, I'll give you at least the rest of that time to respond.

Mr. Skarica, you haven't referred directly to Bill C-31. I wonder if you could, in terms of the steps it takes to get at the issues you've brought forward today.

**Mr. Toni Skarica:** As I indicated, the major problem for the Canadian taxpayer is this \$50,000 for every bogus refugee, of which virtually every one of them is from the European Union.

So the attraction of the bill, from what I can see, is that instead of taking three years or four years—and it has been longer for some of these people—you will have a process whereby people will be dealt with right away and leave. They won't come then, because right now they're coming because they know they can come here and say four words, "I am a refugee", and all of a sudden they've got \$50,000.

So that, hopefully, will.... They won't even be here, because for one or two months it's not worth it.

• (1810)

**Mr. Rick Dykstra:** What sort of support do you get from the provincial government on these issues?

**Mr. Toni Skarica:** What I find astonishing is that not a single MPP, not a single one, of any party has said anything about this, and, in fact, not a single councillor in Hamilton has said anything about this, and they're paying the freight. I find that amazing.

I think part of it is political correctness, frankly, because they don't want to say...well, we don't want to come out and criticize the Hungarians, or, most of these people are Roma, and they don't want to use the word "Roma", because they don't want to be condemned as being politically incorrect—probably by the people next to me, so.... I'm fortunate because I'm from central Europe. I'm from that area of the world.

The accused calls me racist, right from the beginning. He's using that card: "Oh, you're a racist, and that's why you're going after us". No. They're criminals. They're serious criminals here—

**Ms. Jinny Jogindera Sims:** On a point of order, Chair—

**The Chair:** Stop the clock, please.

**Ms. Jinny Jogindera Sims:** —I'm finding it very difficult to sit here and listen to some of the verbiage, which is not to the point. It is getting to the point where I find, as a parliamentarian, it's very hard for me to sit here and listen to some of that language.

**The Chair:** Well, it's the joy of sitting on a committee. I don't think that's a valid point of order. Thank you.

Another point of order?

**Mr. Kevin Lamoureux:** No, actually, it was just to provide a comment.

I can appreciate the emotions and so forth. I just hope that Ms. Douglas and her companion will be provided an opportunity to respond because the non-question that was put forward, and so forth, but—

**The Chair:** Look, this is emotional stuff. With due respect, I heard emotional issues on both sides, and Mr. Skarica is not out of order as far as I'm concerned.

Start the clock.

**Mr. Rick Dykstra:** I just want to say to the point that I'd be happy to provide some time, but I also listened to the presentation and listened to all of the responses from both Francisco and Deb, so I did want to at least get the opportunity to put my perspective out there.

But I would like to offer up the time, and I'll do my best not to respond while you're speaking.

**The Chair:** You've only got a minute left.

**Ms. Debbie Douglas:** As I was saying, we believe that Bill C-11, as a negotiated compromise, is actually a good bill. I think that Mr. Skarica is conflating issues of trafficking with issues of refugee determination. We absolutely believe that Canada needs to have stronger responses to issues of trafficking and we congratulate the Ontario Attorney General's office for moving forward with this case and being as successful as it has been. But let's not set national policy so that we can go after traffickers coming from Hungary.

I think this is one of the concerns, that we continue to paint asylum seekers with this very broad brush and we believe that by demonizing people needing to get protection from Canada.... We couch it in economic terms and we couch it in language about people abusing our system—

**Mr. Rick Dykstra:** I don't just couch it in economic terms, I also couch it in ways that Canadians deserve fair justice—

**The Chair:** We're out of time and I'm going to have—

**Mr. Rick Dykstra:** Thank you.

**The Chair:** —Ms. Sims yelling at me if I don't start her.

You have until the bell rings.

**Ms. Jinny Jogindera Sims:** First of all, I don't see anything in this legislation that is going to fix the problems in Hungary and its penal system. We need to get that very clear.

The other thing that I want to get out there is this term of “bona fide refugees”. We have refugees and we have asylum seekers. When they come to our shore, whether or not they come with fraudulent documents via plane or ship, we don't actually have that determination until one has been made. So I don't want to use the language that everyone who comes is fraudulent or bogus.

Bill C-11 was praised by the then-minister and the current minister of immigration as a work of art, I will say—albeit those weren't the exact words—and yet it has not been implemented. So for me to go on to say that it's broken and, therefore, we have to fix it, when we haven't implemented a solution through the legal system, from a bill

that went through our Parliament, is very hard for me to sit here and do.

I think that some of the rhetoric—and I'm going to use the word “rhetoric”—I have heard today is fearmongering. It leads people, if they were to listen to certain testimony, to think that everybody who comes on our shore, including the grandparents of many of us sitting here or relatives of many of us sitting here, has come here because they want to defraud the system, that all they've come here for is to bypass and use and abuse the system. I can tell you that I've worked with refugees over the last number of years who don't like getting money from the state, who get out and work. They work very hard and they get on; they get their education, and they become contributing members in this society. That's what Canada is.

• (1815)

**Mr. Rick Dykstra:** You mean like Chungsen Leung?

**The Chair:** Mr. Dykstra.

**Ms. Jinny Jogindera Sims:** Canada is a nation that is filled—

**Mr. Rick Dykstra:** Yes, that's exactly—

**The Chair:** Mr. Dykstra, this is not debate. She has her time.

**Ms. Jinny Jogindera Sims:** Canada is a nation that has a citizenship—

**Mr. Rick Dykstra:** If we're going to have a debate, we'll have a debate.

**Ms. Jinny Jogindera Sims:** —from all over the place. That's what I'm saying, and they're just like Mr. Leung, and Rathika's family as well.

But what I really want us to focus on here is the human element. I've never lived in a refugee camp. I'm very grateful for that. But I've read and seen enough and worked with enough children who've lived in refugee camps to know that we, as Canadians, cannot forget our humanity in some kind of bogus quest to think we can fix what's going on in other countries. If there is fraud, let's go after it, and let's do it in a way that targets those who commit fraud and not the victims.

I know I'm running out of time, but when you come across the people you work with, Francisco and Debbie, can you give us a brief human landscape of the kinds of situations they've left behind when they've come here seeking asylum?

**Mr. Francisco Rico-Martinez:** Well, refugees are seen as a threat. But refugees are not a threat; refugees are threatened. That's when we open the door of our office. We receive families and single people from everywhere. The people who are more traumatized are sometimes the ones who don't understand even why they are in Canada in the first place, and especially their children. The children are the last people to understand that.

Our suggestion for dealing with this situation is to create multidisciplinary teams will address the human needs of everybody, including language, housing, and the many issues we have.

**The Chair:** I'm sorry, sir, but we have to call it a day. The bells are ringing, and the boys and girls have to go to vote.

We will reconvene here tomorrow morning at 8:45.

I'd like to thank you, sir, and Ms. Douglas, and Mr. Skarica for coming here and making excellent presentations to us.

This meeting is adjourned.

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