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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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•(0845)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning. This is the Standing Committee on Citizenship and Immigration, meeting 32, on Monday, April 30, 2012.

The orders of the day—this meeting is televised today—are pursuant to the order of reference of Monday, April 23, 2012, Bill C-31, An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act.

I have to figure out a way of shortening that down. It's too long to read.

First of all, did you all miss me last week?

An hon. member: Oh, yes, terribly.

Mr. Rick Dykstra (St. Catharines, CPC): Chair, I just want to say welcome back. Obviously we really did miss you.

In your absence, though, Mr. Lamoureux had no trouble with the title at all. So I'm not sure if that's a....

The Chair: He's a better reader than I am.

Mr. Rick Dykstra: I see.

The Chair: First of all, I want to congratulate Ms. Sims on her appointment to the committee.

I know you'll do a fine job. You've been on the committee in the past. Welcome. I'm sure you'll give Mr. Dykstra a run for his money.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): I will try.

The Chair: Indeed. I gather that you and Mr. Lamoureux chaired the meeting in my absence. I thank you for that.

We will get to business. We have a large group of people.

We have, from the department, Mr. Les Linklater, assistant deputy minister of strategic and program policy.

Good morning to you, sir. I understand you're going to be speaking for up to five minutes.

We have Jennifer Irish, the director of asylum policy and programs.

I understand the two of you were present at the last meeting, when the minister was here.

We have Marie Bourry, the executive director and senior general counsel of legal services.

Good morning to you.

We have Mr. Michael MacDonald, the director general of national security operations directorate. He's with Public Safety Canada.

You were here last Thursday as well, I understand. Welcome.

From Canada Border Services Agency, we have Mr. Peter Hill, the director general of post-border programs.

You too will be speaking for up to five minutes, sir.

Finally we have Mr. Joe Oliver, the director general of border integrity from the Royal Canadian Mounted Police.

Good morning to you.

Mr. Linklater, we'll start with you. Thank you.

[Translation]

Mr. Les Linklater (Assistant Deputy Minister, Strategic and Program Policy, Department of Citizenship and Immigration): Good morning, Mr. Chair, and members of the committee.

Thank you for the invitation to appear before you today. We are pleased to be here today to discuss the Protecting Canada's Immigration System Act—legislation that would strengthen and improve this country's immigration system.

In particular, I've been invited to address the asylum system reforms and the human smuggling measures in Bill C-31. I and my other colleagues in the next panel will be happy to address any questions you may have with respect to the biometrics measures in Bill C-31.

[English]

To begin, Mr. Chair, allow me to note that Bill C-31 further builds on the long-needed reforms to the asylum system that were passed in Parliament in June 2010 as part of the Balanced Refugee Reform Act. The proposed new measures would further accelerate the processing of refugee claims for nationals from designated countries that generally don't produce refugees. They would also reduce the options available to failed claimants to delay their removal from Canada.

It may surprise some committee members to know that Canada receives more asylum claims from countries in Europe than from either Africa or Asia. Last year alone, almost one quarter of all refugee claims made in Canada were made by European Union nationals.

I think we could all agree, Mr. Chair, that EU countries have strong human rights and democratic systems similar to our own, yet they produced almost 25% of all refugee claims to this country in 2011. That's up from 14% the previous year.

In recent years, virtually all EU claims were withdrawn, abandoned, or rejected. The refugee reform measures in Bill C-31 would help prevent abuse of the system and would ensure that all of our refugee determination processes are as streamlined as possible. This would be accomplished without affecting the fairness of the system and without compromising any of Canada's international and domestic obligations with respect to refugees.

Cracking down on human smugglers is an important element of protecting the integrity of our immigration system, Mr. Chair. That's why Bill C-31 would also help the government take action on the dangerous yet lucrative business of human smuggling.

Bill C-31 would establish mandatory detention for up to a year for individuals who come to Canada as part of an irregular arrival, in order to determine their identity and admissibility, including whether they have been involved in any illegal activity.

Mandatory detention would exclude those designated foreign nationals who are under the age of 16. Also, once an individual's refugee claim has been approved, that individual would be released from detention.

Bill C-31 would reduce the attraction of coming to Canada by way of illegal human smuggling by limiting the ability of those who do so to take advantage of our generous immigration system and social services.

In closing, Mr. Chair, let me say that the proposed measures in Bill C-31 strike the right balance between ensuring the safety and security of Canada and Canadians, and making sure that those who are in need of Canada's protection continue to have access to it.

• (0850)

[Translation]

Thank you, Mr. Chair.

I'll now turn to Peter Hill, my colleague who is director general at the agency.

Mr. Peter Hill (Director General, Post-Border Programs, Canada Border Services Agency): Thank you, Mr. Chair.

And thank you to the committee for the opportunity to be here today. When I last appeared at this committee, the CBSA's mandate as a border enforcement agency was outlined in addition to its role in administering Canada's immigration laws. Building from that appearance, I would like to focus my remarks today on how Bill C-31 would impact the CBSA, should Parliament pass it into law.

[English]

First, I would like to speak to the impacts on refugee reform.

The implementation of Bill C-31 would not change the CBSA's operational responsibilities in processing refugee claims upon arrival at our ports of entry. What would change for the CBSA, however, is that the agency would be expected to remove individuals within one year, where possible, following the last negative decision on their claim for asylum in Canada.

To enable us to address potential increased removal demands, the CBSA has put in place a removals strategy that includes expanding the assisted voluntary returns and reintegration pilot program. This program encourages voluntary returns as a cost-effective and timely option that complements traditional enforced removals by providing increased counselling, education, and incentives to leave.

This program has proven to be successful in other countries. As better integration assistance is provided for participants, it ensures that they would be less likely to attempt to return to Canada.

I would now like to focus on the human smuggling component of this legislation.

When people arrive in Canada as part of a suspected human smuggling operation, it is the responsibility of the CBSA to determine whether or not these individuals are a threat to Canada. Under the current system, the existing detention review periods of within 48 hours, seven days, and 30 days are not designed to deal with cases involving large volumes and complex human smuggling operations.

The task of distinguishing genuine refugees from those who may pose a public safety threat are complex and time-consuming. By allowing Canadian authorities the additional time necessary to investigate, individuals can be assessed more effectively and their cases dealt with more efficiently.

As such, the mandatory detention provisions are necessary in order for Canadian authorities to investigate persons whose identities have not been determined or who may be inadmissible for reasons of criminality or security. After one year, those found not to be refugees would have the grounds for their detention reviewed by the Immigration Refugee Board after a period of 12 months has passed since their initial detention, and then again at the end of six months. In addition, individuals could be released on application to the Minister of Public Safety if, in the minister's option, exceptional circumstances warrant an early release.

Specifically regarding the detention of minors, I would like to add that in all cases this is considered a measure of last resort. The CBSA's position has been and will continue to be, under Bill C-31, to always consider the best interests of the child.

• (0855)

[Translation]

Mr. Chair, I'd like to thank the committee for the opportunity to speak to you today. The CBSA is committed to ensuring Canada's immigration laws are respected, and we will continue to take appropriate enforcement action to ensure the safety and security of the Canadian public.

Thank you.

[English]

The Chair: Thank you, Mr. Linklater and Mr. Hill, for your presentations. The committee will now have questions for you.

Mr. Menegakis.

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

Good morning, all. Thank you for being here today and for testifying before us on this beautiful, bright Monday morning.

I want to speak a little bit about how Bill C-31 would reduce the attraction of coming to Canada by way of illegal human smuggling. What we want to do, of course, is limit those who use those channels.

First, why do you think certain individuals seek Canada for asylum rather than a country that is near by? Something must attract them for them to want to come all the way to Canada.

Mr. Les Linklater: I think the attraction Canada presents is really a reflection of our success as a country that is built on immigration. The generosity of our system, which has been held up by the United Nations as a model for other countries to emulate in refugee determination, puts Canada in very good stead. The very generous social safety net supports—once they are determined to have permanent resident status—and the number of strong legal institutions and numerous appeals in place currently, lead individuals to take the risk of either claiming asylum here, or more dangerously, seeking the assistance of smugglers to gain access to Canada.

Mr. Costas Menegakis: When the minister appeared before us last Thursday—you were here, Mr. Linklater—one of the things that struck me was the amount of time it takes for a bona fide, legitimate asylum claimant to be processed today versus what the case will be if Bill C-31 is implemented.

Can you give us those numbers one more time, please?

Mr. Les Linklater: Sure. At this point it's taking about 20 or 21 months for a refugee claimant to have a first-level hearing at the IRB. That means someone who—as the minister quite eloquently said on Thursday—has scars on their back and is in desperate need of protection is handed the form to fill out and told to wait 20 months before their hearing is scheduled, at which point they would be approved.

With the new system, an individual who was in desperate need of protection would have the first-level hearing at the IRB within 45 days if they were from a designated country. For all others it would be within 60 days. That would allow them a much faster consideration of any claim and a much faster pathway toward

permanent residency for those who are found to be in need of Canada's protection.

Mr. Costas Menegakis: From beginning to end, if I recall correctly, it can currently take in excess of 1,000 days, versus somewhere around 200 days after Bill C-31 is implemented.

Mr. Les Linklater: That's correct.

Mr. Costas Menegakis: What do you think makes it easier for a refugee from Europe to come to Canada versus one from Africa? Those numbers are staggering. We get more European applicants than African applicants.

Mr. Les Linklater: There are a number of factors that we look at. For example, direct transportation links between Europe and Canada are much more numerous than between Canada and Africa. At the same time, most European countries are visa-exempt. That makes it easier for individuals from certain countries to access Canada by either flying directly or transiting a third country in Europe, but also by using fraudulent documents of countries that are visa-exempt for Canada.

Mr. Costas Menegakis: Can you give us a sense of how people find out about Canada and come to know of our asylum system here? Something must be said at the ground level. Do you have an idea of what is being said at the ground level that attracts people to want to come to Canada and claim asylum here?

• (0900)

Mr. Les Linklater: I think community networks are very effective in getting the word out and spreading it to home countries. We have reason to believe that has been part of the phenomenon related to Hungarian claimants. Family connections and friends in Canada have been providing feedback to relatives and contacts in Hungary about the current state of the system and the availability of various benefits.

We also have a very strong representative community in Canada that publicizes their availability to assist individuals to navigate the system once they are in Canada. Of course, the Internet is an incredible tool for people to understand what's going on in countries far away.

Mr. Costas Menegakis: We know from previous testimony we've heard here that last year alone we had 43 million hits on our immigration website here in Canada, 56% of which were from outside of the country. So I'm sure that's one factor.

How am I doing for time?

The Chair: You have less than two minutes.

Mr. Costas Menegakis: Geographically speaking, in terms of African refugee applications or African refugees, where do they typically make their asylum claims?

Mr. Les Linklater: Which countries are they coming from—

Mr. Costas Menegakis: No, where do they make their asylum claims from in Africa?

Mr. Les Linklater: Where do they make their claims?

Mr. Costas Menegakis: Yes.

Mr. Les Linklater: It can vary. France receives an exceptional number of claimants from Africa, as does Spain and Greece, particularly with the Arab Spring.

Mr. Costas Menegakis: I gather that a lot of them end up coming here?

Mr. Les Linklater: Some do. Europe is a big transit site for claimants from Africa.

Mr. Costas Menegakis: Under the current system, how many people using every level of appeal available are still determined not to be refugees? That's clogging the system, isn't it?

Mr. Les Linklater: There are a number of appeals available. A person can seek leave to appeal a negative decision to the federal court. There's also the pre-removal risk assessment, and individuals can apply for humanitarian and compassionate consideration if all other avenues fail for them. I don't think we have exact statistics on the number of individuals who try each and every one of those avenues of appeal. We could certainly provide what information we have to the clerk.

The Chair: Thank you.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much, and my thanks to you both for your presentations.

I wanted to start off with a question you heard me ask the minister the other day. It wasn't too long ago—I don't think the ink has dried on C-11 yet—that the great Canadian compromise was reached, and all parties said how wonderful it was.

How long have you actually been working with the new rules created by C-11?

Mr. Les Linklater: The transition provisions for C-11 differed for a number of elements within the legislation. There were a couple of provisions that came into force at royal assent, including the way we assessed humanitarian and compassionate applications. There were some operational changes that came as a result of that in June 2011. The bulk of the transition measures were to come into force no later than two years after the date of royal assent, that is, by June 29, 2012. We have been working towards that implementation date. A number of packages of regulations were pre-published last summer. As we got into broader implementation issues, the minister was of the view that we needed to look at further legislative reform. At this point there are very few actual provisions from C-11 that have come into force.

• (0905)

Ms. Jinny Jogindera Sims: One of the things that was bothering me after the last session was that I hadn't asked about implementation. Here we are now going through a major overhaul when we haven't even implemented what was agreed to by all parties and seen what kind of effect it would have on the system.

At the meeting, Minister Kenney suggested that immigration detention at CBSA facilities is not damaging. He made it sound as if

detention centres were quite nice places. I can't imagine the word "detention" being used together with "nice place". How many CBSA detention spots are there in the country right now? Are the facilities generally operating well below capacity or are they over their capacities? Where will the detainees be going once all those spots are filled up?

Mr. Les Linklater: I'll ask Mr. Hill from the CBSA to respond.

Mr. Peter Hill: The CBSA administers three detention centres. The one in Vancouver is at the Vancouver airport. It's very short-term and there are 24 beds for less than 72 hours' use. In Toronto, the immigration holding centre has a capacity of about 220 beds. In Montreal and Laval, we have a holding centre with a capacity of about 150 beds. In addition, we rely on the provinces to detain high-risk cases and other cases where CBSA does not have holding facilities. For the past couple of years, the daily maximum has ranged from 400 to 500 detainees using the provincial and CBSA detention facilities.

Ms. Jinny Jogindera Sims: Thank you.

So at any time, even with the current system, where we're not going to be detaining as many as we will under the new legislation, we not only have, let's say, roughly 394 spots—my math isn't always perfect, but I think that's pretty close—but we're going well over that, and people are actually going into prisons to be detained.

Now where do the children go?

Mr. Peter Hill: We have capacity for 400 to 500, so we have sufficient capacity to manage that caseload. When they're in a provincial prison, they are held under terms and conditions that respect international norms for immigration detention. So it's important to point out that they're housed in a provincial facility, but they're housed and managed in accordance with immigration detention rules and norms that the UNHCR, for example, administers and monitors. So we adhere to those.

Ms. Jinny Jogindera Sims: When I'm looking at the cost of keeping somebody in detention—please indulge me here—I know the costs of keeping somebody in prison who's been convicted of a criminal record are fairly high on a daily basis. Do you have an idea of what the cost is of keeping somebody in detention and provincial prisons?

Mr. Peter Hill: Certainly we do and we monitor costs very closely.

Ms. Jinny Jogindera Sims: So what is the daily cost?

Mr. Peter Hill: The daily cost averages between \$200 and \$230 a day. Those costs actually are rising. We're seeing an increase in costs. In particular, under our arrangements with the provinces, the costs are gradually rising now to a point of about \$230 per day.

Ms. Jinny Jogindera Sims: What about when they're in prison? What's the cost then?

Mr. Peter Hill: In prison the rates are comparable.

Ms. Jinny Jogindera Sims: Do you get a cut rate, then?

Mr. Peter Hill: We don't get a cut rate.

Ms. Jinny Jogindera Sims: Okay, I just wondered, because that amazes me how low that is. When I've looked at the cost of detentions for anybody else going into detention, it's much higher than \$230 a day. Anyway, I'll leave it at that for that question.

Also, when we—

● (0910)

The Chair: You have 30 seconds, Ms. Sims.

Ms. Jinny Jogindera Sims: Is that all I have? I'm so sorry.

For my 30 seconds, I think I will confine myself to a comment, then.

When I read through this, a lot of this language is to strengthen and improve this country's immigration system, or to protect the citizenship of Canada. Of course we want to protect the citizenship of Canada, but I'm looking for the kind of evidence that you have, hard evidence, that our current Bill C-11 policies, if implemented, would actually put Canadians at risk. I don't want to talk about the bogeyman or what-ifs, because those what-ifs exist when anybody arrives in this country.

Thank you.

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

Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Mr. Hill, I'm wondering if you could tell me, are you aware of the *Sun Sea* and *Ocean Lady*? I'm sure you are. Can you indicate whether or not there's anyone from those two ships who are still in detention?

Mr. Peter Hill: Yes, certainly. All of the 76 migrants from the *Ocean Lady* have been released on terms and conditions, and they're complying with those terms and conditions. Of the 492 who arrived on the *Sun Sea*, currently six individuals remain in detention. The others have been released on terms and conditions, and they also are complying with their terms and conditions.

Mr. Kevin Lamoureux: What allows or gives you the authority to be able to continue to detain those individuals more than a year, currently?

Mr. Peter Hill: Under the current system, the minister's delegate, who is a CBSA hearings officer, makes representations and argues on a case-by-case basis whether detention should be continued because the identity hasn't been confirmed, whether there is concern about danger to the public, or whether there is a reason to believe that the individual might be inadmissible for criminality or security. That case is made to the quasi-judicial Immigration and Refugee Board. It makes the decision whether or not to maintain detention.

Mr. Kevin Lamoureux: Have you found that system to be dysfunctional, where it doesn't work?

Mr. Peter Hill: I can say that, in the experience of the *Ocean Lady* and the *Sun Sea*, there have been instances where the minister's delegate has not been satisfied that the identity of the individual has been determined and nevertheless, despite that situation, a decision has been made by a member of the IRB to release.

Mr. Kevin Lamoureux: So out of the 76 from the *Ocean Lady*, for example, are you having any difficulty in tracking these individuals?

Mr. Peter Hill: They are complying with their terms and conditions, and their whereabouts are well known in the country. Most of them tend to be located in the Toronto region.

Mr. Kevin Lamoureux: Is it difficult for you as an agency to be able to keep someone in detention beyond six months?

Mr. Peter Hill: Are you speaking generally?

Mr. Kevin Lamoureux: Generally speaking, if you felt as an agency that there was a need to keep someone in detention for more than six months, is it difficult for you to be able to meet that need?

Mr. Peter Hill: CBSA has a very good track record in terms of arguing successfully for detention on a case-by-case basis, but the detention review requires that seven days, and 30 days, and then every 30 days thereafter, it demonstrates that reasonable activities are being taken by the agency to maintain detention.

Mr. Kevin Lamoureux: So it would appear that the system is in fact working in that sense. This whole issue of processing times is not new. My question for Mr. Linklater is when did this actually start? How long has it been going on for?

Mr. Les Linklater: In terms of the hearings at the IRB?

Mr. Kevin Lamoureux: Yes, in terms of lengths. We hear stories of people being here for four years, six years. How long has it been happening for?

Mr. Les Linklater: It really does depend on the ebb and flow of the number of claims that are received in any given year. For example, prior to the imposition of visas on Mexico and the Czech Republic in 2009, I think our intake was well in excess of 30,000 claims.

Mr. Kevin Lamoureux: So let's say before 2005, was it a serious problem then?

Mr. Les Linklater: I don't have any historical information, but perhaps Ms. Irish could respond.

Ms. Jennifer Irish (Director, Asylum Policy and Programs, Department of Citizenship and Immigration): There was also a spike in the late nineties and that led to a backlog reduction strategy that was pursued by the board around 2002 to 2004. There have been various times where the flow of asylum claimants has been above the 25,000 mark.

Mr. Kevin Lamoureux: So it's safe to say before the early nineties, mid-nineties it wasn't really an issue, and that it started to first appear in the late nineties?

• (0915)

Ms. Jennifer Irish: I don't have the data with me to make that conclusion.

Mr. Kevin Lamoureux: I'm wondering if you can provide that information to the committee. It would be through the committee chair. I think it would be valuable information.

The Chair: Ms. Irish, you can give it to the clerk.

Mr. Kevin Lamoureux: Mr. Linklater, I'm wondering if you can tell me why it is, given the seriousness of the problem, it has taken the bureaucracy to raise the profile of this particular issue with the ministry. How long has this particular minister been aware of the seriousness of the backlogs?

Mr. Les Linklater: I think we have to take a step back and look at the amount of time that's invested in terms of doing the policy work to support certain legislative initiatives such as this.

The Chair: I'm sorry, we've run out of time.

Mr. Leung.

Mr. Chungsen Leung (Willowdale, CPC): Mr. Chair, what I want to do is continue on with this line of thought. If it costs about \$230 per day and that's about \$84,000 per year, so wouldn't it be more expeditious if we, within a 30-day period, deemed the person inadmissible to Canada and deported that person?

Mr. Les Linklater: Our estimates are that with the provisions contained in Bill C-31 that's generally what will happen. The claims will be heard on a much faster basis. Those who need protection will then be channeled in to the permanent resident stream much more quickly, and we wouldn't be removing those individuals. Those individuals who are found not to need Canada's protection would then be moved into the removal stream with the view that removal would take place within one year from their last negative decision at the IRB, whether that's the RPD or the new appeal division. With new tools like the assisted voluntary returns program, which Mr. Hill mentioned in his opening remarks, we feel that this is going to help incent individuals to depart Canada voluntarily as well, and will allow CBSA to focus on high-profile and serious cases for removal within that one-year period.

Mr. Chungsen Leung: Could you walk me through the decision path that happens when an individual comes in one of these mass arrivals, irregular arrivals. What is your first step? If he comes in and says, "I'm a refugee claimant", what is our first step to identify his identity, and how do we communicate with the country of origin to confirm that? Then the next stage would then be to ask if he is a true refugee, and does he pose a threat to Canada. Could you walk me through that process also in terms of time and so on?

In my opinion I think it would be much more expeditious if we can have an earlier decision to deport these people.

Mr. Les Linklater: I will ask Mr. Hill from the agency to walk you through the screening process.

Mr. Peter Hill: Operationally speaking, when a vessel arrives with several hundred individuals aboard, the first concern is health and safety. To ensure that the passengers are not suffering from some

kind of communicable disease, the health issue is addressed. That's the first step.

The second step is to determine identity, which can be challenging. Individuals often arrive either undocumented or they have discarded their document overboard during the voyage. They may have attempted to destroy their documents. So it is quite a laborious and time-consuming process to confirm identity. If there is evidence, it then needs to be matched with individuals. Documentation needs to be assessed on whether it is fraudulent or was fraudulently obtained.

The agency will not attempt to communicate or exchange information with the country of origin because there are concerns about ensuring that the identity of asylum claimants is not revealed. Therefore, the agency relies on cooperation with like-minded countries and other partners, to determine whether they have information that would help confirm the identity of individuals.

The third step is then a question of admissibility, on a case-by-case basis. Once identity has been established, further checks with respect to security and database checks in partnership with Canadian agencies and international partners, confirm whether or not an individual has been associated with organized crime or crimes against humanity, or if there is any association with organizations involved in terrorism.

This process is time-consuming. It may extend over a number of countries in view of concerns about human smuggling. Generally, this is the process followed when we have a mass arrival.

I would say that it presents tremendous pressure on the CBSA to maintain the detention review schedule, which happens at 48 hours, 7 days, and 30 days. Currently, the agency is moving flat out to bring the required information to the IRB at the detention reviews, to confirm that there are concerns with respect to identity and admissibility, and to maintain detention.

That process does not serve the agency well. It was never designed for mass arrivals. One of the key proposals in this legislation is to deal with that, so that CBSA and RCMP, for example, have the time to conduct the necessary checks.

• (0920)

Mr. Chungsen Leung: Have we learned any lessons from either the state of Israel or Taiwan? Both countries have faced issues similar to this in the past. How do you prevent potential terrorists from slipping through the net? Sometimes this information is not adequately documented anywhere in the world. On a worldwide basis, how do you prevent terrorists from slipping through the net?

Mr. Les Linklater: Could I ask Mr. MacDonald to respond?

Mr. Michael MacDonald (Director General, National Security Operations Directorate, Public Safety Canada): You're correct about this being a global phenomenon. All countries face this, and as Mr. Linklater mentioned, for example, the Arab Spring that happened not long ago posed certain challenges to all border authorities around the world, certainly to those in Europe.

The way you have to prevent terrorists from slipping through the net goes along with what I was talking about last week—working with our key allies, having a robust prevention strategy that operates overseas, and sharing information appropriately with key allies. Oftentimes, it comes down to very strong intelligence work.

Then, should a mass arrival happen at your border, what we've learned from the MV *Sun Sea* and MV *Ocean Lady* is the key aspect that Mr. Hill just talked about—ensuring that the border authorities have the time to do the proper checks, and the time to go out and work with their international colleagues to exchange information, if necessary, to help establish identity and admissibility.

The Chair: We're way over. I'm sorry.

Madam Groguhé.

[Translation]

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

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

I would like to ask a question about Bill C-11.

For that bill, a committee was appointed to designate safe countries of origin. With respect to designating these safe countries, the minister considers it important to have some flexibility to be able to act quickly.

What do you think about the idea of imposing a delay on the committee, rather than taking away its authority to designate countries of origin safe?

Mr. Les Linklater: If I understand the question correctly, Mr. Chair, you want to know whether we will consider a delay...

Mrs. Sadia Groguhé: I would like to know what you think about the idea of imposing a delay on this committee that was set up so it can act and make a decision as quickly as possible, rather than completely taking away its responsibility for designating countries safe.

Mr. Les Linklater: The current bill sets out that certain factors included in the regulations will be taken into account with respect to the trigger of an assessment of conditions relating to countries that could be designated by the minister. It's the minister who does it, while it was based on a recommendation from the committee in the previous bill.

As for maintaining some flexibility and the work of the departments involved in the refugee protection process, we think that, based on the information available, we will be able to make recommendations to the minister more quickly on the designation of countries and that there will not be immediate decisions based on the legislative criteria. An aspect of qualitative analysis will be added to the quantitative factors.

• (0925)

Mrs. Sadia Groguhé: The Office of the United Nations High Commissioner for Refugees highlighted the importance of adopting a mechanism that would make it possible to revise the list of safe countries in order to respond to the gradual or sudden changes that arise in a given country. Could you please explain the planned procedure for reviewing, updating and issuing designations by departmental order?

Mr. Les Linklater: I'll ask Ms. Irish to explain to you how it will work.

[English]

Ms. Jennifer Irish: The UNHCR indicates that you can have a designated country of origin process as long as it's based on verifiable and objective information. It does recognize that one consequence of designation can be expedited processing.

In order to meet the criteria as outlined by the UNHCR, we have set up a system that involves two stages. The first is to hit a quantitative trigger. We will set that trigger by ministerial order to be a 75% rejection rate or higher, or a 60% abandonment rate or higher. There will be no requirement for there to be a certain volume of claims coming in.

For fewer than 30 claims, there will be a separate test. Basically, it will be a checklist of verifiable qualities associated with the country, including its ability to have basic democratic freedoms, freely operating NGOs, and an independent judiciary. Once those triggers are hit, there is an analysis. The analysis includes the system of government and also the ability of the state to provide recourse and basic human rights. That will be done by an interdepartmental panel. That panel will be getting information from independent actors, including the UNHCR. That's how we will meet the test provided by the UNHCR in its recommendations.

[Translation]

Mrs. Sadia Groguhé: Would it be possible to provide the committee with the information you are referring to?

Ms. Jennifer Irish: Yes, of course.

Mr. Alexandre Roger (Procedural Clerk, House of Commons): It would have to be sent in writing.

[English]

The Chair: Would you send that to the clerk, please?

[Translation]

Mrs. Sadia Groguhé: In the Immigration and Refugee Protection Act, the legislator made it possible to hold the refugee claimant on limited grounds, particularly to verify the person's identity while complying with Canadian legislation on detention in Canada. In Bill C-31, we are introducing provisions that seem to depart from the act and the charter.

I'd like to know what you think about this and what these new provisions are based on.

[English]

The Chair: We're over time. You're going to have to answer that in another round, I'm afraid.

Mr. Weston.

[Translation]

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): Thank you, Mr. Chair. I'd like to thank our witnesses for being here today.

There is a lot of speculation when an analysis like this is begun. We just heard Ms. Sims speculate that the number of individuals in detention will increase if Bill C-31 is passed.

Mr. Linklater, is it possible that the number of detained individuals will decrease because the rest of the world will know that Canada does not admit people who are not true refugees?

Mr. Les Linklater: I'll start, and Mr. Hill will finish.

The impact of unexpected arrivals on detention services is difficult to predict. For instance, when the two boats arrived in British Columbia, we didn't know how many people were on board, what condition they were in, if they had identification documents and if it would be difficult to establish their identity. If there are other arrivals like this, it would obviously have an impact on detention services. Right now, it's the agency that will resolve the situation with the provincial authorities to ensure that they can receive these people.

• (0930)

Mr. John Weston: Mr. Linklater, you suggested that there is a global information network and that everyone is talking about the possibility of coming to Canada. If the regulations are more reasonable and more specific, is it possible that this network will spread the news?

Mr. Les Linklater: The provisions of the bill will have an impact on the applications for refugee status. The fact that we are planning more serious penalties for human smuggling will have an impact on the smugglers' networks. People will rethink their intent to cross the Pacific if they are fully aware that the smugglers themselves will be imprisoned and punished more severely or differently.

[English]

For those who choose to make the decision to come to Canada through an irregular arrival, the fact that there will be conditional status for those who do need Canada's protection, I think, will also have an impact on behaviour. If people understand that, as the minister said on Thursday, they won't be able to reunite with close family members for a period of five years, they may look to

reconsider their decision to be smuggled or to take part in these types of mass arrivals.

Mr. John Weston: Mr. Hill, do you want to comment on the effect on either the increase or potential diminution of people in detention?

Mr. Peter Hill: Yes. I would say that overall Bill C-31 has a number of measures that may well deter individuals from coming to Canada, but I would like to point out and try to underline that detention is not intended and is not designed at all to be a deterrent.

The purpose for a detention, which is in accordance with internal norms for immigration detention, is threefold. Detention is maintained to confirm identity, to ensure that the public is protected from danger so that dangerous persons are not released into the country. And, third, detention is maintained when there is a concern that the individual represents a flight risk and is unlikely to appear for their refugee or immigration processing. Those three conditions are the bedrock of the detention provisions that are proposed under Bill C-31.

The Chair: Thank you.

Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair, and welcome back. Welcome to all of our guests today.

As I've been listening and we've been talking about the different aspects of Bill C-31, I cannot believe Canada is the only country that will process some claims faster than others. I'm wondering, Mr. Linklater, if you can expand on that.

Is Canada the only country that will actually do this, or are there other western industrial countries—that we're compared against—that will also be doing the same process and have the same system set up?

Mr. Les Linklater: No, we won't be the only country. In fact, we're one of the few that doesn't have a differential regime now. Most of western Europe has expedited processing for certain types of claimants, and that's part of the analysis that we factored into the provisions that are in this piece of legislation.

I think Ms. Irish has much more detailed information, so I'll ask her to complement this answer.

Ms. Jennifer Irish: Almost all EU countries have a safe country of origin procedure—it's called safe country of origin in most other countries. Australia and New Zealand also have such processes. In each case they operate a bit differently in terms of how countries are defined, but in most cases, they are processed within seven days. In some countries, it's as little as 48 hours. Some European countries also have the ability to do a paper review, which is not permitted in Canada because of our legal context.

• (0935)

Ms. Roxanne James: So basically we're in catch-up mode at this particular time.

Mr. Les Linklater: You could say that, yes.

Ms. Roxanne James: Thank you. I'm wondering if you could provide the committee—again, this is probably directed to both of you—with examples of countries similar to Canada that detain refugee claimants who arrive as part of a human smuggling operation. Surely we're not the only country that is proposing to do that or is doing it currently.

Mr. Les Linklater: No. In fact, Australia has a long history of mandatory detention for all irregular arrivals, and has used a number of offshore facilities in the past to make determinations and to process individuals before allowing them into mainland Australia. Again, I'll ask Ms. Irish if she has more information on this.

Ms. Jennifer Irish: Not many countries make the distinction between a mass arrival and mass irregular arrivals. In Europe, most of them get these mass irregular arrivals, but not necessarily by sea. Many European countries also have some form of mandatory detention. For example, the U.K. is one that provides mandatory detention for most of its safe countries of origin. It varies country by country.

Ms. Roxanne James: So it's not just the human smuggling operations or the large irregular arrivals. Other countries actually detain other refugee claimants who come in through regular modes. Is that correct?

Ms. Jennifer Irish: That's correct.

Ms. Roxanne James: Would you say that, even with Bill C-31 and the provisions that are outlined within it, Canada will use the detention of refugee claimants sparingly in comparison with other western countries? Is that true, or are we going to go beyond what other countries are doing?

Mr. Les Linklater: It's fair to say that Canada's use of detention, even under Bill C-31, will be much less the case than is the norm in many other countries. Mr. Hill mentioned the average daily population in immigration detention across the country at about 500. When you think about the number of claimants we receive in any given year—last year I think it was around 25,000 and the year before about 23,000—it really does represent a small percentage of individuals who come to Canada to make a refugee claim.

Ms. Roxanne James: I'm going to touch base very quickly on a question asked by Ms. Grogue from the NDP. She started to say that we're violating the Charter of Rights and Freedoms or the UN Refugee Convention, but in fact that's not the case. Under Bill C-31, we're still complying with all the regulations within the charter and the United Nations Refugee Convention.

Could you comment on that very quickly?

Mr. Les Linklater: I think it is important to underline that Bill C-31 will continue to ensure that Canada upholds its domestic and international obligations towards people seeking protection. The principle of non-refoulement is, first and foremost, part of our analysis of the various provisions of this legislation. No one will be returned to a country where they face the risk of persecution or torture. They will receive Canada's protection if it's determined that they do require it.

What is different about Bill C-31 is that we will be able to move individuals through the system much more quickly than has been the case, to ensure that those who need our protection are given it much more quickly.

The Chair: Thank you, Mr. Linklater.

Ms. Sitsabaiesan.

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

I'm going to follow up on Minister Kenney's comments from his last appearance. He says that detention and a five-year ban on permanent residency or family reunification are not penalties, and that they're merely not granting privileges to certain claimants.

Punishment is different from withholding privileges. Why does the minister say that it's not punishment when it is manifestly harmful to refugee claimants and intended, in the minister's words, to deter asylum seekers from arriving in groups? Do any of you want to comment?

Mr. Linklater.

Mr. Les Linklater: The notion of permanent residence in Canada comes down to the according of a privilege by the government and by the country. Individuals who need Canada's protection under Bill C-31, as I just explained, will continue to receive that protection. I think the minister is right in saying that these new provisions under C-31 will probably strike a cord with individuals who are contemplating participating in a smuggling venture if they understand what the consequences could be to them in terms of their family situation, while ensuring that the penalties for the smugglers are enhanced to also try to further deter those types of networks.

• (0940)

Ms. Rathika Sitsabaiesan: Why does he say that it's a privilege to not be detained when non-discriminatory mobility and liberty rights are enshrined in the Refugee Convention and the Convention on the Rights of the Child? Once again, it's going back to people coming in groups.

Mr. Les Linklater: I think, as Mr. Hill explained, the grounds for detention are not going to change with Bill C-31. Individuals will be subject to detention if there are issues related to establishing their identity, if they pose a risk to Canada or Canadians through criminality or security, or if they pose a flight risk. I think it's important to underline that individuals, who may be part of a designated mass arrival, if they are able to help cooperate with CBSA and the RCMP to establish their identity and they don't pose a risk to the public, would be released from detention.

Ms. Rathika Sitsabaiesan: Okay.

I'm going to switch gears a little then because we're getting the same answer. In the bill, are you aware that clause 19 could throw into question the permanent residency of thousands of people in Canada, and if that was not the intent of the clause, how will you enforce this provision?

Mr. Les Linklater: I think as the minister said when he appeared on Thursday, the intention is certainly not to leave this prospect of individuals losing permanent resident status if their country conditions change over time.

The minister also said he was open to constructive input around potential amendments to clarify that provision, because certainly, it's not the intent that individuals would be punished due to circumstances that are beyond their control.

What Clause 19 is really about is ensuring that those individuals who, after receiving protected person status and/or permanent resident status in Canada, then return of their own volition to their country of alleged persecution are responsible, themselves, for essentially spurning the protection status that Canada has provided them.

That's the intention of clause 19. It's certainly not to be a punishment for individuals who, after having been in Canada for a number of years, see the conditions in their country of origin change to a point where they can travel back freely, as Canadian permanent residents or citizens.

Certainly there is an openness to look at clarifying that clause.

Ms. Rathika Sitsabaiesan: It seems a little odd to me. I came to this country as a permanent resident and for people to come as asylum-seekers and be granted permanent residency to start a life and then if the conditions in their home country change, they're expected to leave. I don't understand how that could be fair. Could you comment on that?

Mr. Les Linklater: I think as the minister and I have both stated before the committee that if there is an opportunity to clarify the intent of clause 19 through clause-by-clause, the government would be happy to look at further clarification to ensure that this type of situation doesn't occur for individuals who have permanent resident status.

The Chair: Thank you.

Mr. Opitz, you have about two minutes.

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

Quickly, and I think it's for Mr. MacDonald, how can we share information critical to determining who a person is, or what their status is, if we don't have effective information-sharing agreements with other countries? Can you comment on that? If we didn't have any proper procedures in place to share information, what would the impacts be?

Mr. Michael MacDonald: We need to have the proper channels and tightly prescribed limits on where you can share, what type of information you can share, and with whom you can share. The sharing of information in a CBSA, law enforcement, or security context is extremely crucial to efforts, but it must also be very carefully crafted, monitored, and done with utmost seriousness.

• (0945)

Mr. Ted Opitz: I'm going to turn to the RCMP, because I don't want to leave you out of this.

That says colonel to me, but it's staff inspector, right?

C/Supt Joe Oliver (Director General, Border Integrity, Royal Canadian Mounted Police): No, it is chief superintendent.

Mr. Ted Opitz: My apologies.

Tell us who human smugglers are. What are their impacts on the people, and how do they attract people?

C/Supt Joe Oliver: Human smuggling is a global problem that is controlled by organized crime. Our experience has demonstrated that human smuggling involves a network of networks. Globally placed individuals seeking to enter into Canada can be recruited through a number of facets. When we talk about a human smuggling organization and a human smuggling venture, particularly by sea, it's a very complex venture. It involves very significant logistics in acquiring a vessel, provisioning a vessel, and so forth. It involves a financing component that is often criminal in nature. It involves the recruitment of passengers, the housing of those passengers—

Mr. Ted Opitz: I have half a minute.

The Chair: You don't even have that. You're out of time.

Well, you have 30 seconds.

Mr. Ted Opitz: What is the impact on the people, particularly the women, who are trafficked? What happens to them?

C/Supt Joe Oliver: I must distinguish between human smuggling and human trafficking. Human smuggling involves an arrangement where someone pays for passage. Human trafficking is where people are coerced and forced for either sexual or labour exploitation.

In some cases it can transition from human smuggling to human trafficking, when individuals who are smuggled are indebted to criminal organizations and still owe a debt. Sometimes that involves being exploited in order to pay off that debt, or being employed in a criminal enterprise to work down the debt.

The Chair: Thank you, Mr. Opitz.

Mr. Linklater, Mr. Hill, and other witnesses, thank you for coming this morning. Your evidence has been quite helpful to the committee. We will suspend for five minutes.

- _____ (Pause) _____
-
- (0950)

The Chair: Thank you very much. We will reconvene the meeting. The next portion of the meeting is on biometrics, I believe.

Mr. Linklater, welcome back. You're a man for all seasons. You're the assistant deputy minister of strategic and program policy.

Mr. Desruisseaux, you are the director general of the admissibility branch.

Marie Estabrooks, you are the manager of biometrics policy (programs and projects), emerging border programs with the Canada Border Services Agency. Good morning to you.

Finally, we have Chuck Walker of the Royal Canadian Mounted Police. He is the director general of the Canadian criminal real time identification services.

Thank you all for coming.

Mr. Linklater has up to 10 minutes.

Mr. Les Linklater: Thank you, Mr. Chair. I don't think I'll use all 10—

The Chair: Then we'll have more time to ask questions.

Mr. Les Linklater: That's great.

Good morning again, Mr. Chair and members of the committee.

We are pleased to appear before you today to talk about Bill C-31 amendments related to the use of biometrics in Canada's immigration program.

[Translation]

I will first focus on the broad benefits of the use of biometrics followed by comments on the planned implementation of biometrics in CIC's temporary resident program.

[English]

Identity verification is central to the decisions taken by officials responsible for administering and enforcing the Immigration and Refugee Protection Act, IRPA, since accurately identifying a person is the fundamental element in effectively determining that person's admissibility. The challenge for Canadian immigration and border officials is to efficiently separate the thousands of *mala fide* cases from the millions of legitimate ones that we see each year. When doubts arise, time and resources are required to authenticate identity. When doubts are repeated at subsequent encounters of a traveller with immigration and border officials, additional time and resources may be required to re-authenticate identity.

Biometrics is a 21st-century identity management tool that can identify people based on an intrinsic physiological characteristic such as fingerprints. Unlike identity documents, biometric information is unique to each individual and cannot be easily forged.

Biometrics therefore helps supplement existing biographic information-based screening tools by significantly reducing the chance that one individual can pose as or be mistaken for another individual. Once biometric information such as fingerprints has been

enrolled, the identity of that individual has been effectively fixed for as long as that information is retained.

[Translation]

Using biometrics will strengthen the integrity of Canada's immigration program by helping prevent known criminals, failed refugee claimants, and previous deportees from using a false identity to obtain a Canadian visa.

- (0955)

[English]

Biometrics will also help facilitate legitimate travel to Canada by providing a fast and reliable tool to help confirm identity. Furthermore, the use of biometrics will put Canada in line with most other western countries that are now using or preparing to use biometrics in their immigration and border management processes. These include the United Kingdom, Australia, the United States, New Zealand, and many countries in the European Union.

[Translation]

CIC is working in partnership with the agency and the RCMP to begin using biometrics in the temporary resident program. Starting in 2013, foreign nationals from certain visa-required countries and territories applying for a temporary resident visa, work or study permit will be required to provide biometric data to obtain a visa.

[English]

What we will do is take a fingerprint as well as a photo of all individuals applying from certain visa-required countries. The fingerprints that are collected will be sent to the RCMP for storage and will be checked against the fingerprint records of refugee claimants, previous deportees, criminals, and previous temporary resident applicants. The results of these checks will inform the visa decision-making process. At a port of entry, a border services officer will use the photo taken abroad to verify that the visa-holder is the same person to whom the visa is issued. Fingerprints will be verified at secondary inspection lines at the discretion of the border services officer. The use of biometrics means that these border officers will be able to make more confident decisions based on more accurate information.

Mr. Chair, I should note that CIC recognizes the importance of having the appropriate privacy safeguards in place to protect the biometric information collected under this initiative. We therefore continue to consult with the Office of the Privacy Commissioner to ensure that adequate privacy protection safeguards are in place for all aspects of the initiative.

Finally, with regard to the specific clauses found in Bill C-31, these would provide the necessary authorities for the collection and use of biometric information by allowing the government to:

(a) set in regulations which foreign nationals must provide biometrics, what information must be provided, and the procedures they must follow when making a temporary resident visa, work permit, or study permit application;

(b) set exemptions to those requirements in regulations, for example, for children, for the elderly, or diplomats;

(c) set regulations to facilitate the use of biometric information for Canadian law enforcement, and;

(d) exempt from the application of the User Fees Act the establishment of a biometrics fee.

The bill would also enhance the authority for CIC to provide services to the CBSA and to partner with other governments in providing services to applicants.

In closing, the collection and use of biometric information as supported by this legislation will strengthen the integrity of Canada's immigration program and facilitate legitimate travel, while at the same time protecting the privacy of applicants.

[Translation]

Thank you for your time. We will be pleased to answer any questions you may have.

[English]

The Chair: Thank you.

Mr. Opitz.

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

Welcome to the new witnesses today. I think Mr. Linklater has his name permanently engraved on the chair he's in right now. He's been with us so often.

Thank you for appearing today and thank you for this discussion on biometrics, because it is hugely important. I know I went through a similar process recently when I got my NEXUS card, where they had to take an iris scan and my fingerprints. I didn't find it to be a particular problem, and it certainly facilitates my travel back and forth very quickly, which to me has been a tremendous convenience.

Mr. Linklater, you just mentioned in your opening comments that there's a secondary process as people come through the immigration line, so to speak, and that there is an opportunity for an officer to then check the biometrics.

Are they checked immediately each time or are they at the discretion of an officer?

Mr. Les Linklater: I may ask Ms. Estabrooks to supplement what I'm about to tell you, but essentially the collection overseas of the fingerprint and the taking of the photograph will lock in the identity of individuals as soon as they come into contact with Citizenship and Immigration overseas. The fingerprints will be sent to the RCMP for checks on previous infringements and whether or not there are matches with previous applicants. If there are no adverse concerns, then our officers will be able to issue the visa overseas.

At the port of entry though... We've all been at Pearson, for example, when an international flight has come in. The volume of travellers—many of whom don't have a NEXUS card—are lined up in front of the BSOs to be examined for admission to Canada.

What we are foreseeing with this system is that the border services officer would verify the individual's face with the photograph that was taken overseas to match identity, and if there are no concerns during the examination, the individual would be waved on. If there are questions or if there are discrepancies, at that point the border services officer may refer the individual to secondary examination. At that point their fingerprints would be taken again and checked against the database.

• (1000)

Mr. Ted Opitz: Sorry, Ms. Estabrooks, were you going to add to that?

Ms. Marie Estabrooks (Manager, Biometrics Policy (programs and projects), Emerging Border Programs, Canada Border Services Agency): I think Mr. Linklater has adequately responded.

Mr. Ted Opitz: Okay. Great.

How fast would the fingerprints be checked? I know this isn't *CSI*. They're going to send this over to the RCMP. How long would that person likely be held?

Ms. Marie Estabrooks: We estimate that in secondary processing it will add, at maximum, seven minutes to the examination.

Mr. Ted Opitz: That's not very intrusive, so that's really good.

I know in this country, unfortunately, we've had several instances of criminals who have been deported multiple times and have regained entry multiple times. How is this system going to be able to combat that kind of an occurrence? Some of these have been very serious criminals who have committed very serious crimes.

Mr. Les Linklater: Right. I think the minister gave a list of individuals who had been deported multiple times who had come back to Canada by using false documents or impersonating someone else.

By locking in the identity of all individuals who require a visa before they come to Canada, we'll be able to eliminate the potential for misrepresentation or individuals trying to use tampered documents that are not their own. We will have the capacity to be able to identify individuals before they even arrive at a port of entry by denying them a new visa because of their adverse history. Or essentially, we will be able to—at the port of entry if required—take enforcement action if the identity of the individual in front of the officer does not match that which is in the database.

Mr. Ted Opitz: Then they're held, and I guess the RCMP would look into those individuals. Or are they just turned away?

Mr. Les Linklater: It would start with the CBSA at examination and then of course we would see how events play out. The idea would be that the individual would be denied access and returned. But if they chose to make a claim for refugee status, we would have to accept that if they were determined to be eligible.

Mr. Ted Opitz: CBSA is not here, but I would wonder how many people have already been caught? Oh, sorry, you are. I was thinking of the other gentleman, my apologies.

How many people have already been caught fraudulently trying to get into Canada? I know you don't have biometrics in place to do that yet, but have you been able to catch anybody doing that already?

Ms. Marie Estabrooks: We do have a number of examples where biometrics has helped us identify people. I don't have exact stats in front of me, but it certainly is a tool that allows us to identify somebody who's using a fraudulent document or a different name. It's a huge advantage at the border.

Mr. Ted Opitz: Now the database we would have on biometrics, that would be transferrable with other allies like the U.S., the U.K., Britain, that sort of thing? You would have the process in place to be able to exchange information quickly?

Mr. Les Linklater: Perhaps I'll ask the RCMP to supplement, but as I said in my initial remarks, what will happen is that we will take the biometrics overseas and they will be transmitted to the RCMP, who will actually store and do the checks on our behalf.

C/Supt Chuck Walker (Director General, Canadian Criminal Real Time Identification Services, Royal Canadian Mounted Police): That's correct. As far as standards go, the biometric standard is consistent between the countries that were named earlier. In fact, we have a body called the International Information Consortium, which consists of the U.K., the United States, Canada, New Zealand, and Australia. They communicate regularly on standards with respect to the exchange of biometric information, so really it's a question of appropriate agreements in place, as was spoken about before the break, and the manner in which the information is shared.

From the technical perspective, there is no issue.

Mr. Ted Opitz: You talked about time and resources. What impact will this have? Things are time and money as well, and it costs the country when we're bogged down in administrative processes. What impact will that have on simple efficiencies, on simple budgets for CBSA and others?

Mr. Les Linklater: In terms of implementation of the project, I mentioned that we would be looking to set a fee for biometrics, so we would be cost recovering a portion of the expenditure associated with taking the biometric.

We are looking at expanding our network of visa application centres around the world, to be able to ensure there are a number of points of service available where individuals can go to have the biometrics taken, as is the case for a number of countries. The U.S., the U.K., for example, are also using these types of services.

I won't say there will be no impact on individuals seeking to apply to come to Canada, but the benefits, as you pointed out from your own experience with NEXUS, and the investment of going forward to provide the biometrics is ultimately helpful for further facilitation as the identity has been locked in.

•(1005)

The Chair: Thank you.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

I have to stipulate that I'm one of those who is very protective of any invasion of my privacy, so I always have lots of questions around biometrics. It's not that I have anything to hide, but I always worry about where that data is going to go.

My understanding was that in Bill C-31, the biometric limitations that are spelled out there were only going to be used to determine identity. But beyond that I'm gathering there is all kinds of sharing that goes on, so maybe you could further outline for me how the biometric information we are collecting for this purpose under Bill C-31 could be used beyond that.

Mr. Les Linklater: I'll ask Mr. Desruisseaux to respond.

Mr. Alain Desruisseaux (Director General, Admissibility Branch, Department of Citizenship and Immigration): The biometrics will be collected for immigration and border management purposes. Beyond that fact, the biometrics information will be shared with CIC and the CBSA. As Les Linklater mentioned, it will be stored by the RCMP and the information will be used for law enforcement as well—and there are real benefits to that check if there are any known criminals who would try to enter Canada—and also to facilitate travel.

[*Translation*]

In some cases, the information can be used to collect additional data with respect to information that has been collected at crime scenes, which may also support the work of law enforcement agents when it comes to victim identification. So there are several possible uses in this area.

[*English*]

There are very strong privacy safeguards that will be developed. CIC has been working very closely with the Privacy Commissioner and her office. Canada has among the most robust rules in this area, and it is certainly the intent to pay a lot of attention to that dimension.

Ms. Jinny Jogindera Sims: Have privacy impact assessments been done under clauses 6, 9, 30, 47, and 78? Have they been done already?

Mr. Alain Desruisseaux: There is one that was done already with regard to the services that will be contracted to the VACs. There will be others coming, which we hope are going to be public.

Ms. Jinny Jogindera Sims: I think it becomes really important for this committee, and for us, to know that those have been done before we start looking at the legislation more. If you want me to, I can repeat the clauses, but I'm hoping that you got them the first time.

This is a huge issue, and this is the kind of thing, as you know, that makes most Canadians nervous, because we really do value our privacy, not that we have anything to hide. Right now there is a limit. It's a photo, and it's going to be fingerprints. Those are the only two biometric data we're talking about.

Has there been any thought given to elements or sub-elements that could be used? Do you have other plans in the works?

Mr. Les Linklater: No. At this point, the international standards really do rely on fingerprints and face recognition. That is a standard we will move towards. Much like the Americans, under the perimeter strategy announced by the Prime Minister and the President, we're looking to ensure that we have complementary technological approaches.

•(1010)

Ms. Jinny Jogindera Sims: Also, I realize that the information is going to be housed with the RCMP, but I want to know which other government institutions and non-government institutions—the private sector and other groups—could have access to that. Who can access the information once the RCMP has it? We really do want to have specificity rather than just generalities.

C/Supt Chuck Walker: Certainly. There are two ways to access the information we keep in the identification data bank at CMP PPU 030, which is described in Info Source. That information is verified through the use of biometrics. However, there is a criminal-name index capability through the CPIC system, the Canadian Police Information Centre, that will enable a user to at least determine whether there appears to be a record in the identification data bank. But it always comes with the caveat that the only way to be certain it's the same person is through the submission of fingerprints.

With respect to the exchange of biometric information, that's achieved through the real time identification system the RCMP has implemented over the last several years. The only agencies that can connect to that system are agencies that are approved through privacy processes, such as the CBSA and the police. For civil screening purposes, following the requirements of privacy, and with the informed consent of the individual, a private fingerprinting company, which has been accredited by the RCMP and has been connected to the system, can also submit prints electronically to RTID to receive a response.

Ms. Jinny Jogindera Sims: Thank you. Could you make available to the committee the privacy impact assessment that has been done? That would be good.

How long do we imagine this biometric information will be stored? Once verification happens, do we get rid of it, or does that happen once temporary residency is completed, or once somebody has become a citizen, or indefinitely? Those are the kinds of questions that come up.

Mr. Alain Desruisseaux: The rules for the retention of biometrics will be determined through the regulations. What is now being considered is retaining the information for a period of 15 years or until citizenship is gained. That is the plan.

Ms. Jinny Jogindera Sims: That will be specified.

Mr. Alain Desruisseaux: It will be specified through the regulations.

Ms. Jinny Jogindera Sims: Okay, thank you very much. We will see those regulations before things proceed. I'm new, so that's why I'm asking.

The Chair: I don't know what you mean by "things proceed". That isn't the way it works. Stop the clock for a minute.

Ms. Jinny Jogindera Sims: Stop the clock and help our new person.

The Chair: You're half a minute over your time, but....

Mr. Rick Dykstra: Simply to give you some information, legislation is passed, then it receives royal assent. Then it's turned over to the ministry to determine the regulations it works through. Those regulations come back to us after they're completed.

Ms. Jinny Jogindera Sims: I tried.

Mr. Rick Dykstra: It was a good try, but....

Ms. Jinny Jogindera Sims: Thank you very much.

So my—

The Chair: No, no. I'm afraid you're over.

Ms. Jinny Jogindera Sims: I'm over?

The Chair: You were over before I interrupted you.

Ms. Jinny Jogindera Sims: Thank you.

The Chair: Mr. Lamoureux.

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

Mr. Linklater, it is the government's intention to have biometrics implemented in all countries where they are required to have a visa in order to come to Canada. Is that correct?

Mr. Les Linklater: The ultimate goal would be to ensure that we have this tool for all countries that require a visa. But what we have done with the temporary resident biometrics project is to look at a limited rollout in a first phase to ensure that the technology, the operational implications, and the service to the affected clients are going to operate well before we then return to cabinet for expansion of the mandate.

Mr. Kevin Lamoureux: I'm actually glad to hear that. When do you anticipate that all countries would be on stream?

Mr. Les Linklater: I think that will depend on a number of variables. First, with this first phase, we're looking to start the collection of biometrics in probably June or July of 2013 for a number of countries that we're looking at now. So as we test the model, make sure that things are working, and iron out any kinks, I think it will probably be about 2014 or 2015 before we then look to broaden the mandate and to go more broadly.

• (1015)

Mr. Kevin Lamoureux: There are how many countries now that require visas...? About a hundred?

Mr. Les Linklater: That require visas? About 140.

Mr. Kevin Lamoureux: So in 2013 you're hoping to get it started. Is there a...?

Mr. Les Linklater: It's probably about 25% to 30% coverage of the volumes, not necessarily the countries. Looking at it globally, the volume of visas that we issue is just a little over a million, so we would be looking to get coverage in the range of about 300,000 to 350,000 applicants in the first phase.

Mr. Kevin Lamoureux: Okay.

Can you provide assurances to the committee that implementing this policy will in no way actually delay the process of issuing a visa? Are you in a position where you can provide that sort of assurance?

Mr. Les Linklater: Well, as I said in a response to an earlier question, there will be impacts on clients in terms of the need to provide the biometrics. That's why we're looking at expanding our visa application centre network to more points of service. CIC isn't in all countries now where there is a visa requirement.

We're looking to ensure that we have the maximum coverage possible through these centres, to ensure that the visa processing can be as efficient as possible. There may be some time added on in the process, because of the need to travel to a visa application centre to provide biometrics.

Mr. Kevin Lamoureux: Now, in anticipation that you have to get these fingerprints done through some sort of authority that you would recognize, is that going to be done in the same fashion in which you would require a medical return for a permanent resident? So the Canadian embassy will say, "Here is where you go to get your papers."

Mr. Les Linklater: That's correct. We have a number of visa application centres now, in a number of countries, where we have contracted with a firm that specializes in this type of work and has provided service also to the U.K., if I'm not mistaken. These will be our licensed partners, not only for accepting the application, but also for taking the biometrics.

Mr. Kevin Lamoureux: It was interesting. There are some countries, and India in particular, where there was a huge difference in approvals between New Delhi and Chandigarh. Do you believe that the implementation of biometrics is ultimately going to see more visitor visas being approved?

Mr. Les Linklater: I think there's a potential as people understand, for example, that their identity is going to be locked in. We will have more confidence with the information we have, in terms of people trying to use different documentation and different

identities to apply for a visa. So where there are fraud and identity fraud in certain markets, biometrics will actually help us lock in earlier on, and for legitimate travellers, be able to issue visas with much more confidence.

Mr. Kevin Lamoureux: For those who have applied for a visa, we now have a record of their fingerprints, if they choose to immigrate to Canada a few years later. Would you use those fingerprints or would you ask them to get yet another set of fingerprints in their permanent application to come to Canada?

Mr. Les Linklater: At this point, there are no plans to broaden biometrics into the permanent stream. We're focusing on the temporary stream for this project. There may come a time when we will want to have permanent resident applications with biometrics provided. That would, of course, help lock in identity. If we do have a history with the global case management system as our system of record, all of that information will be available on the client continuum.

The Chair: Thank you.

Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

Thank you to the witnesses for staying.

When we talk about biometrics, it's really a twofold process. First of all, we need to make sure that who applies is who arrives. Second, if the person who applies is not who they say they are, it's really important that we be able to verify that biometric data with other countries.

Could you speak to the aspect of the other countries that also use biometrics and how we're going to be able to check across the databases to make sure that who's applying is who they say they are, and who applies is actually who arrives?

Mr. Les Linklater: I'll start and perhaps Mr. Desruisseaux can supplement.

We work very closely with our key allies, those in what we call the five country conference: the United States, Australia, the United Kingdom, and New Zealand. Through that process, Australia for the last number of years has been hosting a server to which all the countries provide a limited number of biometrics for verification and cross-checking against each other's submissions.

What we have found is that there have been a number of hits for all countries where we have become aware of individuals who have tried to access one, and in one particular case, all five of the countries using a different identity each and every time. There's one particularly alarming case where I believe someone managed to get into Australia using a false identity, but because biometrics were used they were able to return that individual to the U.K., where I believe he was facing sexual assault charges. It is a tool that we believe will protect Canada and Canadians much more than is the case today with simple biographic information sharing to ensure we know, as you say, that who arrives is the individual who applied.

• (1020)

Ms. Roxanne James: Thank you.

Again, biometrics is not new.

Mr. Les Linklater: No.

Ms. Roxanne James: When we talk globally, Canada is actually catching up to the rest of the world in many aspects.

Mr. Les Linklater: It's fair to say, yes.

Ms. Roxanne James: In your speech you mentioned that using biometrics will strengthen the integrity of Canada's immigration program by helping to prevent known criminals, failed refugee claimants, and previous deportees from using a false identity to obtain a Canadian visa. Aside from a Canadian visa, is it going to be used, for example, for mass arrivals and human smuggling? Are we going to be able to cross-check the database and use biometrics in those areas?

Mr. Les Linklater: For individuals who arrive in Canada now as refugee claimants.... Whether or not they're part of what would be deemed a mass arrival, we have been taking biometrics from refugee claimants for a number of years and that practice will continue.

We do information sharing with those biometrics with the United States fairly regularly. Through that process we have determined that a significant number of individuals who claim refugee status in Canada are known to U.S. authorities for any number of reasons, whether it's a previous refugee claim or some sort of criminal infraction or record in the United States.

Ms. Roxanne James: Thank you.

In the previous session we had talked about the two vessels that came, *Ocean Lady* and *Sun Sea*. Out of the 492 people on the *Sun Sea*, someone had indicated there were six individuals that were still detained.

Mr. Les Linklater: Still in detention.

Ms. Roxanne James: Was it because of the use of biometrics, or if biometrics had been available for those individuals, would it be a different story today?

Mr. Les Linklater: It could be a different story.

As well, we need to be very careful as to when and how we share information with many countries. The reason I say that is that if we were to share information with an alleged country of persecution and the individual was found not to need protection, we may create, through the act of sharing information, what we would call a refugee *sur place*. The person may not have had a fear of persecution, but by sharing their personal information and the fact they've made a claim

in Canada, we could actually put them in jeopardy if they were to be returned to that country. That's why by using the RCMP as the body to do the sharing through their contacts, whether it's Interpol or other databases to which they have access, I think we'll be able to manage those issues much more carefully.

Chuck, I don't know if you want to add to that.

C/Supt Chuck Walker: I think you have it pretty well covered.

Ms. Roxanne James: Common sense tells us, at least it tells me, that we need to identify people before they arrive in Canada. We hear about what it costs taxpayers to keep someone in detention if he arrives with no documentation, so we need to identify these people.

Could you elaborate on how difficult it is to locate someone who may have gone underground, someone whom we were not able to identify, who came here by fraudulent means or through organized crime? How difficult is it to locate that individual and have them deported from Canada? Also, what are your comments on whether biometrics, if we were able to identify people first, would help matters?

Mr. Les Linklater: CBSA is responsible for managing removals and deportations. It is very challenging for the agency to know where all failed claimants are who aren't in detention. People are often released on terms and conditions. Many are not, but some individuals fail to report to the agency with a change of address, or they decide to try to cross the border into the United States, or they decide to go home. One of the gaps that we currently have and are moving to fill is an exit information system, which is one of the initiatives that will be forthcoming under the perimeter strategy with the United States. This will allow the agency to know whether individuals have left the country voluntarily or not. It will help them to narrow their search in determining where those individuals may be, if we know they haven't left the country.

• (1025)

The Chair: I'm going to ask a brief question about exchanging information with other jurisdictions. How do people know whether those jurisdictions might go beyond what we allow? I think Mr. Walker explained who has access to the information. But it could end up in other regimes. Are there agreements? How do we know those regimes or other jurisdictions won't go beyond what Canada allows?

C/Supt Chuck Walker: I would say you've identified the significant challenge with respect to the sharing of information, be it biometric or otherwise. Agreements are essential, and they have to be put in place with Canadian values in mind with regard to privacy and who gets to access the information. I don't know what I could provide you in the way of definite assurances. The Canadian Police Information Centre exchanges biographical information with the United States and their NCIC system, which is their equivalent to our CPIC, so there are controls in place to ensure that information goes where it is intended to go and no further. However, our countries do not audit each other. That's the current arrangement with the biographical exchange of information.

The Chair: The reason I asked the question was that Mr. Linklater said that if the information were released to certain jurisdictions there might be problems for the individuals.

I guess I'll leave it. After today if you have more information, you could provide it to the committee.

I agree with Ms. Sims. We value our privacy, whether it be for Canadians or for others wanting to become Canadians, and we worry about these sorts of things.

Madam Groguhé.

[Translation]

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

I'd like to know to what extent biometrics has decreased the number of entries with a false identity in Australia, the United Kingdom and the United States. Could you give us figures for those countries? If you don't have them now, could you send us the information later?

[English]

Mr. Alain Desruisseaux: I don't have those statistics.

[Translation]

We have a few statistics. I don't have them with me right now, but we could send them to the committee.

Mrs. Sadia Groguhé: Okay.

In general, are these numbers fairly high? Could you give us a rough idea?

Mr. Alain Desruisseaux: I saw the reports on a few cases. The emphasis was not on how many, but their importance. In some cases, we're talking about dangerous criminals and, in others, systematic and repeated fraud. So it's sort of like doing a background check. Regardless, we will see what statistics are available.

Mrs. Sadia Groguhé: In other words, more stress is being put on the qualitative aspects than on the quantitative ones.

Mr. Alain Desruisseaux: Exactly.

Mrs. Sadia Groguhé: How many people have you intercepted entering Canada using a false identity and to what extent will biometrics close the gaps?

• (1030)

[English]

Ms. Marie Estabrooks: I don't have the exact statistics on how many people we have intercepted. But as we build our databases and

know more people, biometrics will allow the Border Services Agency to identify and fix an identity to a person. It's a tremendous tool to be able to identify who a person is, or who they've applied as in the past.

[Translation]

Mrs. Sadia Groguhé: If I understand your answer correctly, there aren't any specific measures regarding these false identities at the moment.

[English]

Ms. Marie Estabrooks: I could come back to the committee with better statistics. I don't have them in front of me.

[Translation]

Mrs. Sadia Groguhé: Okay.

I'll now let my colleague Alain Giguère take over.

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): My question concerns the databases that will be used to populate your registry. I know that the Royal Canadian Mounted Police are the point of contact with Interpol. When people's fingerprints are taken, are they compared to those in the Interpol database?

[English]

C/Supt Chuck Walker: I would have to get you that answer. My sense is that it is done on a case-by-case basis and on the merits of the investigational question. In other words, there's no system in place that automatically sends information of that nature back and forth.

[Translation]

Mr. Alain Giguère: Very well.

Agreements have been struck with a certain number of countries, including the U.S.A., the United Kingdom, Australia and New Zealand. But they are all members of the Echelon network. Will that network's databases be integrated into the verification base?

[English]

C/Supt Chuck Walker: There are no plans to do that at this point. The conversations occurring between those countries now are very much around the standards of the information, to ensure that similar standards are being used when building the technical solutions. It provides for the opportunity to—

[Translation]

Mr. Alain Giguère: It isn't technical. I'll give you a very clear example. Will the British MI6 databases be included and available for verification purposes? MI6 is part of Echelon.

[English]

C/Supt Chuck Walker: I'm not aware of any plans to do that at this time.

[Translation]

Mr. Alain Giguère: Can you give me an answer about the Interpol and Echelon databases? I'll remind you that the RCMP is the point of contact with those two entities. Echelon and Interpol go through the RCMP. At the time, it took two or three weeks, but now, thanks to computers, you can get it in seven minutes. I would have liked this to have been the case at the time. It would have been very helpful to me.

What happens once this information is received? The Echelon network verifies not only the criminal records of individuals, but also their political identity. In that context, the information...

[English]

The Chair: We're out of time I'm afraid. You're on the list for another round.

Mr. Weston.

Mr. John Weston: Thanks, Chair.

As we consider the concerns about letting private information get into the hands of countries that might not respect the values of the government, I'm thinking those are countries where we wouldn't have the opportunity to be interviewing people like you in the positions of authority that you are in, and we appreciate you being here this morning. Thank you.

My colleague, Mr. Opitz, mentioned the impact of the NEXUS program. Just yesterday I was in contact with another analogous program, which to quote you, Mr. Linklater, ensures that the person who arrives is the person who applied. In this program a photo must be gotten and a card must be provided and the card must be presented at the beginning of the event. The event is under 14 soccer in Ontario, and at a certain level, the children have to go and get themselves carded and present the card.

My point is that it's fair to say that although we do have concerns about privacy, we all have concerns about privacy, the impact of biometrics is going well beyond immigration such as we're considering today.

I would like to get back to this question about information getting into the hands of sovereign governments over which we have no control, and I wonder if you could give us some examples of specific protections in addition to what you've already said such that we don't imagine....

For instance, the information here goes to the Government of Iran. The people who I serve in the riding I represent, West Vancouver—Sunshine Coast—Sea to Sky Country, would be very concerned about that and I'm sure there are other people who would have similar concerns.

•(1035)

Mr. Les Linklater: Essentially, we need to be very careful that we don't share systematic information that could pose a problem to specific individuals, such as in the case you've cited.

When we do collect the biometrics we will be looking to share, as we said, about the criminal history and previous immigration history in Canada, and with trusted partners.

I think what's going to be important about the sharing with partners is to understand that it's not going to be that holus-bolus all information on a file will be pushed out proactively, systematically, to our partners, but where we are sharing the fingerprint, for example, if there's a match then at that point it would trigger a case-by-case conversation with the partner to ensure that we were getting only the relevant information that would be material to a decision that we would make for immigration or law enforcement purposes. So we wouldn't say in the first instance—and bear with me—say Joe

Bloggs' date of birth XYZ coming from country Z with these fingerprints. We would send the fingerprints, and if there's a match we would go back and say what sort of adverse information do you have without actually moving beyond into more detailed information.

Mr. John Weston: Can I just state the obvious that we wouldn't be sharing information with a government such as the Government of Iran.

Mr. Les Linklater: Correct.

Mr. John Weston: It would only be with the countries that you named. You mentioned that we presently share with the U.S., Australia, New Zealand, and the U.K., I believe. Why have we chosen those countries? I think I know the answer but I'd like you to say it.

Mr. Les Linklater: Essentially, the five countries work in concert on a number of fronts. We have common interests in terms of maintaining our immigration systems. There is a common history, a common legal framework with a few variations.

Mr. John Weston: And maybe a common commitment to certain democratic values.

Mr. Les Linklater: Absolutely.

Mr. John Weston: Mr. Walker, would you like to comment on this dialogue?

C/Supt Chuck Walker: It's a very interesting and topical conversation and it's something I dealt with a lot certainly in my previous role as the director general of the Canadian Police Information Centre, because we do have an established exchange with—I'll use the United States as the main example. Through this gateway that I described earlier we exchange information with them. It's not to say it hasn't been without some of its own challenges with respect to Canadians citizens at border points, because the U.S. is a sovereign country and they make their own decisions with respect to inadmissibility or admissibility. We don't have a great deal of control over that.

What I would say is that when we look at exchanging different types of information the best approach from a privacy perspective is always to create an opportunity for discovery, but not, as has been stated, to release the dossier if you will. So by creating an opportunity for discovery, then a specific conversation can occur between the interested parties, and the information that's being held by the originator can then be released appropriately according to the laws of the country.

The Chair: Thank you. We're out of time.

Mr. Leung.

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

Actually, I wish to follow up on the question as expressed by Mr. Walker. It's my understanding that the whole purpose of using biometrics is to protect Canada's borders. What we're really addressing is people who are coming into our borders. For example, for Canadians going into the United States, we will also have to voluntarily submit our biometric data to their border authorities.

I simply want to make it clear that here we're addressing people who are not Canadian citizens. The purpose of using biometrics is complementary to entry and exit control, and is really for people who are not Canadian citizens coming into our borders. Is that correct? Would you comment on that, please?

• (1040)

Mr. Les Linklater: Yes, that is correct. There's no view here that we would need to, or should be, collecting biometrics for Canadian citizens.

Mr. Chungsen Leung: Therefore, those who are Canadians... Unless we're going into a country like the U.K., or Australia, they also have the right to request that information of us.

I need to know, from a technology standpoint, are we at the level where we have the ability to collect that massive amount of information of that 300,000 people who come in? I can see that being built upon at the same speed every year. Pretty soon we may have tens of millions of people in a database. Are we there, technologically, to handle that?

Mr. Les Linklater: Yes, we are there technologically, and we're actually working through the specifications of the technology that will be needed to be provided by the successful bidder who actually moves to implementation of the contract. As I mentioned earlier, we are looking at this as a fairly limited rollout, in the first instance, to make sure we are doing it right and that we have the platform to which we can then add, incrementally over time, to expand to the entire temporary resident program.

Mr. Chungsen Leung: I see.

Is there an estimated cost that is associated with putting this technology in place?

Mr. Les Linklater: I don't have the figure at the top of my mind but I think Mr. Desruisseaux would have it.

Mr. Alain Desruisseaux: Yes, the budget that's been allocated for this initiative is \$174 million over five years.

Mr. Chungsen Leung: Actually, that seems like a fairly modest cost for the kind of security it provides for us.

You indicated this will not be rolled out until 2013.

Mr. Les Linklater: That's correct.

Mr. Chungsen Leung: I see. Okay.

How much more time do I have?

The Chair: You have a couple of minutes, if you want it, sir.

Mr. Chungsen Leung: Oh, I have a couple of minutes.

I want to go back to mass arrivals. When people come to Canada, if they come in by air, they come in across the border and it is easy to ask them for documentation. Let's say you're travelling from a foreign country to Canada, you have to show the airline a passport by way of identity.

If the person gets on the airplane with their identity, and destroys it on the plane and comes off the airplane, what happens then? Can you walk us through the process as to how we handle those undocumented arrivals at an airport?

Then the next question is, how do we handle the undocumented arrivals, the mass arrivals of the *Sun Sea* or other mass arrivals that have happened recently?

Mr. Les Linklater: Very quickly, if someone shows up off an airplane undocumented and they make a claim for refugee status, then the CBSA would interview them to determine, to the extent possible, how best to establish identity. They may actually cooperate and provide us with their identity, in which case they would be reported under IRPA and directed toward the IRB to follow through on their claim. That would be somebody arriving on an airplane after shredding or destroying their document.

For mass arrival, the process is actually the same. The legislative framework remains the same. The issue with a mass arrival relates largely to volume and place of arrival. If it's a boat arrival, for example, it may be at a place where CBSA and CIC are not actually located, or the IRB, so then arrangements need to be made to allow us to logistically house and medically examine the individuals for immigration purposes, and then go through the process of establishing identity.

The Chair: Monsieur Giguère, you have the floor again, sir.

[Translation]

Mr. Alain Giguère: Great.

[English]

The Chair: You can ask the question that I cut you off on.

[Translation]

Mr. Alain Giguère: Thank you very much.

Let's talk about verification of this biometric data.

Do people under investigation have a right of review over the progress of their file and the transmission of the file to other agencies?

• (1045)

[English]

Mr. Les Linklater: Perhaps I can start and Mr. Walker can supplement me.

[Translation]

Everything that has to do with information sharing will go on in the backroom, as we say. Basically, clients won't know about the verification process with our federal partners, enabling us to make a recommendation or come to a decision regarding foreign agents.

Mr. Alain Giguère: I'd like to come back a bit to the make-up of your database. If it's internal, you'll include the databases of foreign countries. That's one thing, but if you make a request to Interpol, that organization will know that that person's file is being reviewed in Canada. So that becomes part of the general databank and all Interpol members have access to that. I clearly remember the situation at the time. That's how it went. Once you make a request to Interpol, all the Interpol member countries are informed that that person had filed a visa application in Canada. Is that right?

[English]

C/Supt Chuck Walker: I can only respond to that by saying I would take that assessment at face value, because I don't have a lot of familiarity with Interpol.

Maybe it would be helpful if I defined what CCRTIS does. It's essentially a national police service, so it very much puts me in the role of providing services to operational entities. Interpol is a client. In the case of immigration matters, Citizenship and Immigration Canada is a client. Mr. Oliver, who was before you earlier, works in the area of the RCMP more directly connected with operational matters for immigration, passports, and other areas of federal law enforcement in the RCMP.

I sit very much in the role of providing services to clients. In fact, the RCMP is another one of my clients.

[Translation]

Mr. Alain Giguère: Very good.

I would definitely like to come back to matters I have already addressed. Let's talk about the South Lebanon Army. This information comes to us largely from Interpol. As soon as Interpol was informed, the Lebanese government knew that members of the South Lebanon Army were in Canada and were probably going to be deported. And they were all deported. Perhaps it's relevant for these people, who were in an extremely embarrassing situation, while returning to a country where the government knew very well that they had done something it didn't like. How can you guarantee that we aren't going to take part in political sanctions?

Mr. Les Linklater: I would like to emphasize how we are going to confine accessibility to the data we will collect. Initially, we will work with partners we trust and can work with. As I said earlier, we aren't going to transmit all the information we have in areas where we don't have control over its circulation or how it will be shared with other entities. That's why, as Mr. Desruisseaux mentioned, we are working with the Office of the Privacy Commissioner of Canada to ensure that, when we share information, we establish adequate controls to ensure that we protect the personal information of people affected by our services.

Mr. Alain Giguère: I'll touch on two of your answers.

First, the people who provide their biometric information don't have control over whether or not their file is transferred to foreign governments.

Second, you acknowledge the fact that you are going to work with Interpol and that Interpol will give this information to all its participants.

Mr. Les Linklater: To clarify, we won't share personal information with entities like Interpol if there isn't adequate controls in place. That kind of control at Interpol on sharing information is not currently planned. We have adequate controls with our key partners, namely, the United States, Australia, the United Kingdom and New Zealand. We are now sharing biographical information with them in clearly defined circumstances. This will remain the model for implementing the biometrics project. We won't share information with partners without having assurances as such. However, federal institutions must share this information amongst themselves to move files forward.

• (1050)

[English]

The Chair: I've let him go on. We're well over time.

It was a good question.

Mr. Menegakis, you have one brief question.

Mr. Costas Menegakis: Mr. Linklater, you've referenced biometrics as a 21st century identity management tool. It's a tool that I believe will give our government, the RCMP, CBSA, CSIS, and law enforcement across the country, an opportunity to identify those individuals who are questionable and keep them from coming into the country.

Let me just say this rather than ask a question: if we permit or allow or accept 254,000 new Canadians annually into the country and we make the assumption that 99% of them are law-abiding citizens and 1% are not—in fact, if we make that percentage 99.9% and .01% are of questionable repute, that would allow 254 people into our country, into our neighbourhoods, who could potentially pose a very serious danger to Canadian families.

That's my minute, sir.

Thank you.

The Chair: Good work.

Thank you, to all of you, for coming and for your contribution to the committee. Thank you very much.

We will suspend for five minutes.

• _____ (Pause) _____

•

• (1055)

The Chair: We'll reconvene.

Before I forget, there's material that the analysts have prepared for today. You should ensure that you bring that back this afternoon because we will not be distributing it again today.

We'll commence with the final session this morning. We have two professors. From the University of Toronto, the David Asper Centre for Constitutional Rights, we have Professor Audrey Macklin, representative from this centre. And, we have Professor Sean Rehaag. Professor Rehaag is an assistant professor at Osgoode Hall Law School, York University.

Good morning, to both of you.

I understand, sir, you're going to have a PowerPoint presentation for the second half.

Dr. Sean Rehaag (Assistant Professor, Osgoode Hall Law School, York University, and Representative, David Asper Centre for Constitutional Rights - University of Toronto): For the second half of the presentation.

The Chair: You have a total of ten minutes to make your presentation, sir. You can use PowerPoint or you can just talk to us, whatever you feel comfortable with.

Our second speaker is a lawyer, Barbara Jackman, who will also have ten minutes.

Good morning to you, Ms. Jackman.

Professor Rehaag, you may start. You have up to ten minutes, sir.

Dr. Sean Rehaag: Thank you.

My name is Sean Rehaag. I am a professor at the Osgoode Hall Law School. I am here with Professor Audrey Macklin from the University of Toronto's faculty of law. Both of us work primarily in the area of immigration and refugee law.

Professor Macklin and I share many of the concerns regarding Bill C-31 raised in the briefs submitted by the Canadian Association of Refugee Lawyers, the Canadian Bar Association, and the Canadian Council for Refugees.

Rather than attempting to summarize those concerns here, though, what we'd like to do is focus on two specific issues. I'm going to speak about the refugee appeal division and Professor Macklin is going to speak about why the bill should not provide new powers to the minister to remove permanent residence from refugees.

Let me jump right into the three quick points that I'd like to make regarding the refugee appeal division.

My first point is to remind the committee that refugee determinations are among the most serious decisions that are made in Canada. If individuals who meet the refugee definition are not recognized as such, they may be deported to countries where they face persecution, torture, or even death. Because of these life and death stakes, the Supreme Court has found that refugee determinations implicate constitutional rights to life, liberty, and security of the person.

The second point I'd like to make is that all administrative decision-making processes are prone to error, and refugee determinations are no exception. If anything, refugee determinations are more likely to result in errors due to the inherent challenges of this type of decision-making. These challenges include having to make factual findings about what may happen in the future in distant countries, and having to make credibility determinations based on the testimony of claimants who may be suffering from post-traumatic stress, who often come from very different cultural backgrounds, and whose testimony is typically filtered through an interpreter.

In addition to these challenges, there's extensive evidence showing that IRB refugee decisions are all too often arbitrary. For the past six years I've published statistics on the Canadian Council for Refugees' website setting out annual grant rates for IRB refugee claim grant rates. Each year dramatic variations are evident in these grant rates, with some members granting refugee status in almost every case they hear and others granting refugee status seldom, if at all.

Even when factors such as country of origin are taken into account, massive, unexplained variations in refugee claim grant rates persist, suggesting that outcomes turn at least in part on the luck of the draw, on who decides the application. In this context, errors in IRB refugee decisions are not only inevitable, they are likely common.

So my second point is that given both the likelihood of errors and the life and death stakes involved, it's essential that claimants have access to an appeal that can reliably catch errors.

My third point is that aside from appeals on the merits to the refugee appeal division, there is no reliable way of catching errors in refugee determinations. It is of course possible to apply for judicial review in Federal Court. However, judicial review is highly constrained. Refugee claimants must ask for leave or permission from the court before getting access to a hearing. In the vast majority of cases, about 85%, leave is denied. Even where leave is granted and a hearing is held, there are constraints on the process. Most importantly, the Federal Court rarely reconsiders factual findings or credibility determinations made by the IRB. Most cases actually turn on these factors.

In addition to these procedural constraints, there is evidence that the Federal Court's decision-making in this area is inconsistent. Earlier this year I released a study that examined over 23,000 applications for judicial review of refugee decisions from 2005 to 2010. During this period some Federal Court judges granted leave in 1% of cases and others in more than 70% of cases. So really it's the luck of the draw; outcomes turn on who decides the case.

Taken together, the procedural limits on judicial review and the evidence of inconsistent decision-making at the Federal Court suggest that judicial review cannot reliably catch errors in IRB decisions.

• (1100)

In my view then, because of the life-and-death stakes involved, because errors are inevitable, and because judicial review cannot catch these errors reliably, it is essential that all refugee claimants have access to an appeal on the merits. Bill C-31 removes appeal rights for some claimants, and my recommendation is that these appeal rights be restored.

Prof. Audrey Macklin (Representative, Professor, Faculty of Law and School for Public Policy and Governance, University of Toronto, David Asper Centre for Constitutional Rights - University of Toronto): Like Professor Rehaag, I want to thank you for the opportunity to appear in front of you today.

I am going to address the impact of provisions in Bill C-31 that seek to expand the circumstances in which permanent resident status of refugees can be revoked.

I have three questions that I seek to answer here. First, does Bill C-31 confer new powers on the minister? Yes. Are these additional powers necessary to achieve legitimate policy objectives? No. Can Bill C-31 be amended to align its provisions with those legitimate policy objectives? Yes.

First, it is important to understand what the status quo says. As IRPA currently exists, it is possible for the minister to seek what is called vacation of refugee protection under section 109. Vacation of refugee status is the process by which the minister seeks to revoke refugee status of somebody who never needed refugee protection in the first place. That is somebody who acquired the refugee status through misrepresentation or fraud.

If the minister is successful in obtaining vacation before the Immigration and Refugee Board, then that person's refugee status is lost as well as permanent resident status. There is a certain harmony to that, because of course, misrepresentation is also a basis for revoking permanent resident status. For refugee status lost for misrepresentation, the consequence is loss of permanent resident status for misrepresentation.

Under the current law there is also a different provision called cessation. The minister may seek cessation of a refugee status where the person no longer needs refugee protection, and the evidence from which one might infer that refugee protection is no longer required might consist of a variety of possibilities, including for example, re-availment of protection in the original country, or a change in circumstances in the country of origin such that there is no basis for currently fearing persecution in that country of origin. That's vacation, where refugee status was never needed, and cessation, where refugee status is no longer required.

Under the current law, when a claim is ceased, it does not follow that permanent resident status is also revoked. Why? That is because the person concerned has not necessarily done anything that is inconsistent with maintaining permanent resident status. There is no misconduct, as it were.

What does Bill C-31 do? It visits the same consequence of automatic loss of permanent resident status on one whose refugee claim is ceased that is currently visited on one whose refugee claim is vacated. In order to understand the difference, I want to give you two scenarios of circumstances where permanent resident status would now be lost under Bill C-31, where it would not be lost under IRPA as it currently exists.

For example, in one scenario a refugee comes from Bosnia in 1993. She obtains permanent resident status. In 2008 she returns for a year to work for an international organization in Sarajevo. She lives peacefully in Bosnia for a year, returns to Canada. Under Bill C-31 the minister could seek to have her refugee claim ceased, and if successful, the automatic consequence of that would be loss of permanent resident status.

Another example, a refugee claimant from Rwanda comes in 1994 and obtains permanent resident status. He sponsors his wife. They raise a family in Canada. At some point, let's say in 2012, the minister decides that it's now safe for Tutsis in Rwanda and so he seeks to cease this person's refugee claim. If successful, on the basis of a change of circumstances in Rwanda, then this person's refugee claim would be lost as well as permanent resident status, and almost 20 years after the fact, that person would be automatically removable, deportable, to Rwanda.

The consequences of this amendment under Bill C-31 is deportation of people who are long-term permanent residents in

Canada with no recourse, and no appeal to the immigration appeal division, for people who have done nothing wrong, and indeed, in the case of a change of circumstances in the country of origin, they have done nothing at all. They have merely been living their lives in Canada.

There are no limits to the power of the minister's discretion to exercise this new power. That puts all permanent resident refugees at risk. They will never know if, when, or why the minister might seek cessation of their refugee status.

● (1105)

The Chair: Perhaps you could wind up, Professor Macklin.

Prof. Audrey Macklin: Okay.

On alternatives, delete clauses 18 and 19 from Bill C-31. The existing powers under IRPA already authorize the minister to seek revocation of a person's permanent resident status if it is obtained through fraud or misrepresentation. Alternatively, add a presumption in the vacation provision to clarify circumstances where a return to the country of origin shortly after obtaining refugee and permanent resident status is the basis of evidence of misrepresentation of fraud in the acquisition of that status.

Thank you.

The Chair: Thank you very much.

Ms. Jackman.

Ms. Barbara Jackman (Lawyer, As an Individual): I am critical of the legislation, and I just want to make a couple of opening statements on my position on this legislation.

First of all, immigration is about the management of people. The rules apply to individuals, and if the rules are absolute and strict, people fall through the cracks or don't have their cases looked at in a way they should be looked at because they don't fit within the criteria properly.

Secondly, we have the Charter of Rights and Freedoms. You as parliamentarians are responsible for ensuring that the legislation complies with the charter. One of the things that has always bothered me—and I've been practising for 35 years in this area—is that legislation parliamentarians have passed gets twisted in the practice. People you never intended to exclude from protection are excluded because you didn't understand the consequences of the legislation you were passing. I don't believe that people here would have passed some of the legislation that's been passed that has harmed people if they had known that was going to happen.

Thirdly, every time you put an absolute bar in legislation you make it open to challenge, because absolutes often don't comply with the charter. For example, persons who are excluded from the system may have good reasons to have their refugee claims determined. For a person who has lost their pre-removal risk assessment there's a 12-month bar on making another application. It may be that conditions in the country changed before they were moved, but by making an absolute and prohibiting them from being able to make a second PRRA if the conditions warrant it, you force them into court on a constitutional challenge. That's the problem with absolutes.

I know there is concern that lawyers will have a self-interest in coming before you because we make our living from representing refugees. Believe me, we will make a lot more if you don't change this legislation than we will ever make if you make it a fair process. So that is a lame excuse for ignoring the kinds of things we say.

I have spent my entire practice challenging legislation that is unfair. We have been fairly successful from Singh in 1985 to Charkaoui in 2007. I can tell you that Charkaoui is based on absolute detention without a review.

When I read the first bill I couldn't believe it. We spent years challenging arbitrary detention without having a timely review of the need for detention. We finally won in the Supreme Court in 2007, and then you turn around and put in legislation that arbitrarily detains people for a year without a review. That's not appropriate. The Supreme Court just said you couldn't do that, so why is it being done now? I don't understand it. It's opening the legislation to challenge. Maybe the government thinks it will stay in place until the court strikes it out, and will achieve their purpose. That's not the way to pass legislation to govern immigration to Canada.

Fourth, the present system works. If you have ever sat in a detention review before an immigration division member, the government wins most of the time. If the government wants a person detained they are likely going to be detained until you can work out an agreement with the Canada Border Services Agency to have them released. Neither the immigration division, the refugee protection division, nor the federal court are particularly sensitive or sympathetic to the rights of non-citizens. The government has the highest success rate, not the person.

The system works fine the way it is now. You don't need to arbitrarily detain people when you have a member of the immigration division who's going to do it anyway. If there's a need for the person to be released, that member will release them. That's as it should be, because some of the people who are detained are victims of horrific events in the past. I think it's wrong to arbitrarily detain a person for a year who is suffering from post-traumatic stress and has experienced severe torture. We've seen people like that. I have one client who doesn't have a jaw and was detained for six months. He doesn't have a jaw because he was bombed in a war. That person shouldn't be in detention for an extended period of time, because it just exacerbates the problem.

• (1110)

The last sort of general point is that in the end we want whomever we accept as refugees to integrate and be functioning members of society. You cannot do that if you first punish them by detention for a year, if you bar them from being able to bring their families. How best do people settle and integrate? They settle and integrate with family members with them. That's not in this legislation. Instead, even though we have an obligation in international law and under our charter to allow these people to remain in Canada, we cut out the possibility of them being able to settle successfully.

I have clients who are on disability because their cases have not been settled for an extended period of time. Over time I see the decompensation that they go through. I see the destruction of their lives and the integrity of the person, the breakdown. It's not fair, it's not human, and it's not in keeping with our humanitarian tradition

towards refugees. If we're going to keep them, treat them fairly. We have an obligation to keep them if they are refugees.

There are a couple of specific points that I know are not going to be covered by other people. One is the travel documents. This legislation prevents people from getting travel documents until they are permanent residents. You don't realize that travel documents have been an escape for our clients. I have clients who are in limbo. Canada has decided it will not deport the person, but it will also not land them. So some of them have been here 10 years, 20 years, 30 years, or longer. During that time, if you take away the right to the travel document, which is a right under the convention for refugees, for people who are recognized as refugees, they can't even travel out to visit family.

In one of my client's cases, she has a relative who's a doctor. She can get medical care from him in another country. She can't get it in Canada because she's not landed. It's an important escape valve for people. It's important to let them be able to make necessary trips on travel documents, even if they're not landed, particularly as this government will just allow people to live in limbo. It's not just this government; it's the government before. These cases go back 10 to 20 years. We're not deporting them, so at least let them travel.

Again, I'm picking up on different points that I know are not likely going to be covered from reading the briefs that have been put before you. One is the inability to reopen for a breach in actual justice. The legislation amends section 171 to prevent reopening of refugee claims if the person has already lost on the refugee appeal or in the Federal Court.

I'm not sure you can do that. You can certainly cut out an appeal, but you can't cut out an appeal on arbitrary grounds. It has to be on grounds that make sense. The grounds for restricting the appeal in this case are not logically related to the concerns of the legislation, in some instances. Certainly, on a failure to permit reopening where there's been a breach in actual justice, I don't think you can do that. The charter doesn't let you do that. If there's a breach in actual justice, the proceeding is annulled. The decision can't be acted upon. There has always been a right to go back and say, "Look, for some reason, you missed the fact that this person is mentally challenged, and you should have looked at it. The case should be reopened and considered again".

The last point I want to make is on the bars and any way out of the five-year bar. If you're a designated foreign national, you're barred from landing for five years. If there's any kind of breach of your conditions of release, it's another 12 months after that, so it can be a long period of time. Then it takes two or three years to get landed, so we're looking at 10 years for some people to be able to settle with their families in Canada. That's wrong. That's far too extended.

There isn't any way around that. I don't know if you realize this legislation cuts out temporary resident permits, and humanitarian and compassionate. Humanitarian and compassionate discretion, a discretion to allow people to get out of the restrictions of the act, has been there since we've had legislation, with no restriction. Since 1910 we've had legislation, and there has always been a discretion.

This legislation started the last time to restrict the humanitarian and compassionate discretion, but not restricting who had access to it. This restricts who has access to it. That is unheard of in our history. If you take away that kind of discretion, you force us into court. And you're going to end up with a constitutional challenge, in which, I bet, at the end of the day, the court's going to say, you have to let someone make an application, you have to have this considered because there are too many human rights engaged by the process for you to be able to just cut it out. So you're just asking for a challenge. Why do that? Why not make it right to begin with?

Thank you.

• (1115)

The Chair: Thank you, Ms. Jackman, for your presentation.

The committee will have some questions.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you.

Further to your comments at the end about H and C, Ms. Jackman, obviously, in your mind and based on your experience, you have a tonne of examples of why someone from a designated safe country would have a number of reasons to have lost their case but have an argument to be made on H and C.

Could you provide me with three or four examples of how someone from a designated safe country would have lost their case and now seek humanitarian and compassionate...?

Ms. Barbara Jackman: Probably one of the most common examples is persons who are gay who come from countries that don't tolerate gays. They may not be recognized as refugees because the level of risk they face is not the kind of risk that amounts to persecution or torture or cruel treatment. It's the kind of situation where they will never be comfortable in those countries. Those kinds of people need the humanitarian and compassionate—

Mr. Rick Dykstra: You do understand that we accept that. With respect to how we designate safe countries, this would be one of the exemptions to that in terms of being able to qualify.

• (1120)

Ms. Barbara Jackman: Okay. I wasn't aware of that, actually, but I think it's important for people who fall through the cracks to be able to have their cases considered.

Mr. Rick Dykstra: That's not the point, though. The point is that we are taking into account humanitarian and compassionate grounds. That may not be available to a person from a designated safe country, but when they have their application heard to begin with, you're darn right that will be part of the process in terms of understanding that if a person is going to be persecuted in their home country because they're gay, and we have designated that country as safe, they will be allowed to stay here in Canada and have the refugee—

Ms. Barbara Jackman: That may be, but that's a refugee claim; it's not a humanitarian claim.

Mr. Rick Dykstra: You can use whatever verbiage in terms of what you would like to see, but it is being humanitarian and compassionate by accepting someone whose lifestyle may be unaccepted in their country of origin but is accepted here in Canada, and we're prepared to offer asylum to that individual.

Ms. Barbara Jackman: Let me just clarify.

In order to be able to meet the definition of refugee, the person has to show they would be persecuted, not have an uncomfortable life, but persecuted. They will not get a humanitarian consideration from those countries, as I understand it, which is a lesser standard. They may never be able to live comfortably in that country and will always face discrimination, but it doesn't reach a level of harm.

Mr. Rick Dykstra: You have acknowledged, though, that you were unaware of the fact that they will be able to qualify.

Ms. Barbara Jackman: I agree on that level.

Mr. Rick Dykstra: I appreciate that.

Mr. Rehaag, your original point is of interest to me. I agree with you that it's hard to argue with statistics when you look at the decision-making process and those who make the decisions at the IRB. There are those who approve almost everyone and those who approve almost no one.

You're aware that under Bill C-11 and under this current legislation we will be moving our process from appointed individuals to 100 individuals who will be part of the public service. Therefore, that process will change significantly in terms of where it is now, where it has been in the past, and where it will go in the future, thereby taking direct aim at the statistics that you cover and obviously are able to show.

Dr. Sean Rehaag: Trying to enhance consistency at the first instance, at the refugee protection division, is an important objective. Even if there's some way of enhancing first instance decisions, one of my points is that errors are inevitable even in the most robust processes in Canada. In criminal law processes we know that occasionally we get decisions wrong. If we make mistakes in these procedurally robust processes, then clearly we're going to make mistakes in less procedurally robust administrative processes. It's still important that people have access to a refugee appeal division. That would be one point.

The second point would be the experience of other countries that have civil servants as first instance decision-makers is that the vast majority of claims are rejected at the first stage. It's really at the second stage, the appeal stage, where people typically get through.

Mr. Rick Dykstra: Do you think we should just leave the system the way it is then?

Dr. Sean Rehaag: I don't think we should leave the system the way it is.

I am pleased to see, for example, in the Balanced Refugee Reform Act, that the government finally indicated that it was going to implement the refugee appeal division. This is something that the people who have been working in the refugee law area have been asking for since 2002. There are ways of improving the system. I think the Balanced Refugee Reform Act did that. I think an appeal for all refugee claimants is particularly important.

Mr. Rick Dykstra: I do. I think that's why the legislation allows for an appeal for each and every person. Now there are two different streams, but it certainly allows for each individual—

Dr. Sean Rehaag: It doesn't allow for an appeal on the merits for certain groups of claimants including those—

Mr. Rick Dykstra: From designated safe countries....

Dr. Sean Rehaag: —from designated safe countries. Those are not the only people who don't get access to an appeal. Designated foreign nationals don't get access to an appeal. People who come to Canada via the United States don't get access to an appeal. People who have their refugee claims ceased or—

Mr. Rick Dykstra: Why do you think it is that those who have come through the United States wouldn't have direct access to an appeal? Do you think they would have gone through the process in the United States, not passed, and then come to Canada?

Dr. Sean Rehaag: To come to Canada from the United States, you have to fit into a narrow exception from the Safe Third Country Agreement. That includes things like having family members in Canada. It's perfectly reasonable for someone who is a refugee, who happens to find a way to the United States, to want to come to Canada to make a claim here instead of in the United States. So there's no real rational reason that person shouldn't be able to get access to an appeal.

I think it's particularly important—

• (1125)

Mr. Rick Dykstra: Everyone does have access to an appeal. You may not like that the access to an appeal is “on its merits”, and I respect your perspective on that. But to categorically state that there are no grounds for an appeal is incorrect.

Dr. Sean Rehaag: Well, there is access to judicial review. Judicial review is not an appeal. It's not an appeal on the merits.

Mr. Rick Dykstra: Okay, you just acknowledged my point. There is access to an appeal. You may not agree with the appeal process. You may think it's wrong, and I respect that. But to say that there isn't an appeal at all is factually incorrect.

In any event, I don't have much time, and I wanted to ask Ms. Macklin—

The Chair: You're out of time.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much. I want to thank the three of you for coming to make your presentation.

The one thing that really hit me as you were speaking is that you brought us back to looking at the human element involved when we're talking about refugees. We are not here to talk just about the smuggling enterprise. We already have the ability to punish the smugglers, and we're all for that, but this is about the human element.

I have a number of questions, and I'm going to ask you to keep the answers brief so that I can get through to everybody.

Audrey, I have a question for you. You provided two scenarios in which people would be losing permanent resident status under Bill C-31 that they would not have lost under the current system. Can you expand on the problems in these cases, and talk about how you would amend the bill to address these problems?

Prof. Audrey Macklin: I hope you can all agree that the examples I gave are not circumstances that would make you think that this person has engaged in a form of misconduct that legitimizes an automatic revocation of permanent resident status.

Bill C-31 expands the possibility of revocation in a way that renders it overinclusive. That means that it includes people and penalizes people who, as I understand from the minister's comments, are not intended to be the targets of this provision. Nevertheless, the law includes it.

What's the problem with overinclusive legislation? Well, there are a couple of problems. One is that it puts everybody who might be subject to it in a position of insecurity and fear. Second, it grants the minister discretion that is in no way tailored to the legitimate purposes of the legislation. It therefore opens the risk of arbitrary exercises of power. I think those are two significant concerns that can easily be ameliorated by tailoring the legislation in a way that legitimately responds to what the perceived need or policy objective is.

I propose two of them here. I can lay them out in greater detail, but I'm conscious that you wanted a brief answer.

Ms. Jinny Jogindera Sims: Thank you. You've answered the question.

Sean, I have a question for you. Can you expand on the reasons the right to an appeal is so closely linked to the rights to life and security?

Dr. Sean Rehaag: I think it relates to the question of the stakes involved in refugee determinations. If people are refugees, it means that they have a well-founded fear of persecution, torture, or death. And if we don't recognize them as such, they could be sent back to a country where they will face that form of persecution. Because of those really high life-and-death stakes, the Supreme Court has found that the process has to comply with the principles of fundamental justice. And one of the principles of fundamental justice is access to a meaningful appeal.

Ms. Jinny Jogindera Sims: The recent arrival—it wasn't so recent—of the boat from Sri Lanka that has given this legislation some push certainly points out the potential for many of the people who came on that boat... Many of them have been proven to be legitimate claimants. Yet we're proposing a system that is going to basically start criminalizing people who are coming here after they have already suffered horrendous hardships.

Would you like to expand on the number of ways this bill increases and concentrates power in one person's hands, which are the minister's hands? Any one of you can take this.

Ms. Barbara Jackman: This isn't just a refugee issue. Under the present legislation as it was amended, the minister can make instructions. I can tell you as a practising lawyer that I'm not even on top of all the instructions he's issued. Every day practically there are new instructions, fundamental instructions that change practice, giving the minister more power to issue fiats without anybody questioning what he's doing is wrong.

I know we've gone to framework legislation in which a lot of it is done by regulation, but to give a single person power to issue instructions, for example, to cut out parental sponsorships, which we've had since time immemorial, to cut out all the people in the pre-February 2008 backlog just because the minister wants to do it, with nobody questioning what's happening, that is really an awesome power and it should not be there. That is not democratic, and to add more to it is completely wrong.

I can't even keep on top of it. There were about 10 of them in the last two weeks with changes every day. Who on earth can practise like that? How are people supposed to know what the law is in Canada if the minister can just turn around, sign a piece of paper and it's gone the next day? That's wrong. There should be oversight for what's happening. There isn't any.

• (1130)

Ms. Jinny Jogindera Sims: Audrey.

Prof. Audrey Macklin: The two other areas in which it happens in Bill C-31 are the designation of countries as safe and the designation by the minister of people as so-called irregular arrivals. It's important to know that these instruments are not actually covered by the Statutory Instruments Act, so they are not subject either to parliamentary oversight or even to the process for regulatory rule-making by cabinet. This causes actual concerns about democratic legitimacy. What it does is it gives a minister the power to make law. That's different from a power to exercise discretion. It's actually a power to make binding rules, and sometimes rules which, it turns out, are inconsistent with regulation, and possibly, arguably, on occasion, inconsistent with legislation.

Quite apart from what you'd take to be the merits of the content of any instruction, I'd suggest to you that the practice of ministerial instruction itself, from a democratic perspective, from a parliamentary legislation perspective, is on shaky legal ground.

Ms. Jinny Jogindera Sims: Thank you very much.

Did you want to add anything, Sean?

Dr. Sean Rehaag: Only to reinforce what Barb has said, that the pace of change through ministerial orders over the last six months really has been remarkable.

The Chair: Thank you, sir.

Mr. Lamoureux.

Ms. Jinny Jogindera Sims: Am I out of time already?

The Chair: You are indeed.

Mr. Kevin Lamoureux: Mr. Rehaag and Ms. Macklin, I want to focus my questions on the two of you.

The first is a rather bizarre question, but I want to ask it. Will your level of income over the next number of years diminish as a direct result of the passage of Bill C-31?

Prof. Audrey Macklin: I'm an academic. I don't make any money off any of this. I'm not employed by—

Mr. Kevin Lamoureux: Mr. Rehaag.

Dr. Sean Rehaag: Yes, me neither.

Ms. Barbara Jackman: Let me tell you, I'm losing money by coming here.

Mr. Kevin Lamoureux: Thank you.

The minister has said he is confident that Bill C-31 is charter compliant. Very briefly, do you believe that to be the case?

Prof. Audrey Macklin: There's a line from a movie, "Show me the money". It's kind of like that: show me the legal opinion that says this is charter compliant.

Mr. Kevin Lamoureux: Mr. Rehaag.

Dr. Sean Rehaag: I don't think it complies with the charter, no.

Mr. Kevin Lamoureux: You're both familiar, no doubt, with the 1951 Refugee Convention. That convention talks about the importance of family unity. Where I'm going with this is in regard to the minister's ability to prevent families from being reunited through sponsorships if they're detained for a year. I'm wondering if you can provide any comment on whether you believe this legislation might be in contradiction to the 1951 Refugee Convention.

Prof. Audrey Macklin: It's not only inconsistent with the 1951 convention, but perhaps of greater salience to the people here, it's inconsistent with the purposes of the Immigration and Refugee Protection Act, which is to see that families are reunited in Canada.

It is well demonstrated through empirical evidence across jurisdictions that integration happens most effectively when families are reunited. Bear in mind that the people who are subject to this five-year limbo and ban on family reunification are people who have been determined to be refugees, people in need of protection. These are people whom Canada has determined to be in need of protection. To deny them family reunification, as I understand from the minister's comments, is designed to punish them.

The question then becomes, why are we punishing refugees?

• (1135)

Mr. Kevin Lamoureux: Finally, this was picked up from the NDP critic, and I would like a bit more of an explanation. Can you enhance, in particular, the Rwandan example that you provided? Could you just embellish on that a little?

Prof. Audrey Macklin: One of the grounds for cessation is what is called a change of circumstance. It says that a person's claim can be ceased if the reasons for which the person sought refugee protection have ceased to exist. This can be raised at any point. It can even be raised at the refugee hearing if conditions have changed between the time a claim has been made and the time of the refugee hearing.

You can imagine that a change of circumstance happens halfway around the world. Somebody, like this person from Rwanda I'm describing, is here in Canada and is doing nothing wrong. He is leading a life, working, raising a family, contributing to Canadian society. Halfway around the world, the situation in Rwanda changes. What, then, does this legislation suggest? It indicates that the minister can seek cessation of refugee status because of a change in Rwanda and this person is automatically deportable from Canada. That is automatic, with no appeal to the immigration appeal division.

What this does, of course, is uproot that person's life. It is as if these years they have spent in Canada building a life, contributing to Canadian society, don't matter, don't exist, are erased. That's the significance of this provision.

Mr. Kevin Lamoureux: In conclusion, do you find that the best thing to do with this particular bill is to just throw it out and start again? Or do you believe it's better to amend it?

Prof. Audrey Macklin: Is that the bill in general or this provision?

Mr. Kevin Lamoureux: It's the bill in general.

Prof. Audrey Macklin: I think that the Balanced Refugee Reform Act seemed to address many of the legitimate policy objectives that the government seeks to attain under Bill C-31. What Bill C-31 adds to it are provisions that are unconstitutional, and from a policy perspective, I think, problematic and unlikely to achieve what they claim.

Let me just say that with respect to clauses 18 and 19, what is being portrayed is a lack of power to deal with people who, let's say, arrive in Canada, acquire refugee status, and then take a holiday back in their country of origin. That's the scenario, right? There is no lack of power to deal with that situation under the existing law. There may be a lack of resources. There may be a choice not to deploy the resources to deal with those situations, but there is no lack of power. There is ample power.

The Chair: Thank you, Professor Macklin.

Mr. Dykstra.

Mr. Rick Dykstra: Thanks.

I just want to conclude a couple of things on clauses 18 and 19. I know that the recommendation you brought forward was to delete clauses 18 and 19. Aside from having that as a preference, what are some options?

You don't even have to answer that today. If you want to provide this committee, through the clerk, with some options that would clarify both clauses 18 and 19, to address the issues that you're speaking to, that would be much appreciated.

Prof. Audrey Macklin: I have one alternative suggestion that I put on a slide. Would you like me to elaborate on that now?

Mr. Rick Dykstra: No, if you have it and it's on a slide, then I'd appreciate getting it and we'll have a chance to look at it.

This is more of a general question, Audrey, just based on your comments about not having seen a legal brief that would show that all of this met the charter and any constitutional challenges that it might face. You said you hadn't seen any. Do you actually believe that the Department of Citizenship, Immigration and Multiculturalism would bring forward a piece of legislation they hadn't tested with respect to charter compliance and constitutional alignment?

Prof. Audrey Macklin: The department doesn't bring it forward; the minister brings it forward.

Mr. Rick Dykstra: I see. So you think that all legislation that is written and forwarded into the House of Commons by government is only written by politicians and it isn't actually vetted, reviewed, written, and approved by those who work within...

Prof. Audrey Macklin: The minister actually said in Parliament, I wrote this bill. But be that as it may, my point is simply to go—

Mr. Rick Dykstra: That's not what he said. He didn't say that he wrote the bill. If you don't—

Prof. Audrey Macklin: Can I answer your question?

The Chair: Order.

I'm sorry, stop the clock for a minute.

We're starting to get rather confrontational here and I would prefer that you make statements. You can ask questions and you can answer questions, but if we get into this, you're going to have to address all this through the chair.

Please proceed.

Start the clock again.

• (1140)

Mr. Rick Dykstra: I just took issue with the fact that you said that. You think every single piece of government legislation is actually written by politicians, which you know is factually incorrect. And the second is that the minister did not say that he wrote the bill. He said he had influence and he certainly approved the bill coming forward to be approved at a cabinet committee and then at cabinet.

There is a process that is followed here, but I will give you a chance to respond.

Prof. Audrey Macklin: I have yet to hear any defence of the legality of the legislation, apart from saying we had it checked. I would be delighted to hear a substantive engagement about the content of the bill, and look forward to that.

Mr. Rick Dykstra: Okay, that's a fair point.

Barbara, I have one more question for you on the whole issue of detaining those who arrive. You're clear that this only applies to those who arrive en masse, whether it be by ship or by plane. It doesn't apply to the other 98% or 99% of those who apply for refugee status in this country.

Ms. Barbara Jackman: As I understand it, if a husband, wife and two kids come, or just the husband and wife, they can be designated. It requires more than two and—

Mr. Rick Dykstra: It requires a lot more than that to be designated.

Ms. Barbara Jackman: —some involvement of smuggling or whatever. In any event, I don't care if it applies to one person or 3,000 people. It's wrong to detain someone arbitrarily for a year without having a detention review. The Supreme Court said that in Charkaoui .

Mr. Rick Dykstra: I appreciate your perspective on this. Don't get me wrong.

Ms. Barbara Jackman: Well, I won in the Supreme Court. Sorry.

Mr. Rick Dykstra: Congratulations.

The point we're trying to get at here is that we do have a responsibility not only to the refugees in terms of their rights, but we also have a responsibility to Canadians and their rights. The point we're trying to get across here is would we allow someone who has not been identified, who we do not know who they are, the right or the opportunity to be set free without having to prove who they are and what they may be? The concern obviously is what if that individual who is released on his or her own recognizance is actually someone who shouldn't have been?

Ms. Barbara Jackman: That's already in the legislation.

I think you should look at the history of the *MV Sun Sea* cases. Those people were detained for months while there were investigations as to who they were, while there were background checks done to determine if they were security threats. The immigration division is your best front-line defence against people getting out if they are a risk to anybody. It doesn't let them out.

Mr. Rick Dykstra: But there are some.

Ms. Barbara Jackman: They stay in detention for a long time. The government was very aggressive through that process. If anyone was ordered released, they went to court and challenged it.

Mr. Rick Dykstra: I want to clarify. Maybe I'm misinterpreting this, but it sounds like your perspective is that those from the *MV Sun Sea*, for example, who came in would be detained 12 months regardless, that they wouldn't be freed once identification was proven, once they'd been determined to be refugees, for example, or once their ID had been determined they're not refugees and therefore they didn't qualify.

Are you assuming that all people under this legislation would be detained for 12 months regardless of the process that followed?

Ms. Barbara Jackman: My understanding is that there's a 12-month bar on release unless they're recognized as refugees within that time period. The thing about it is that we live in a country where we respect liberty. You don't detain people if there's not a need to detain. If you know who they are, you know they're not a risk, they're making a refugee claim, and there are bond signers, why on earth would you detain them except to punish? That's not the purpose of it.

Mr. Rick Dykstra: The opposite then is also true, that if someone is unknown, or someone is a potential threat, they should be detained.

Ms. Barbara Jackman: Those people are already being detained by the immigration division members. You don't need this legislation to do that.

The Chair: John, you have one minute.

Mr. John Weston: We talk often about our great country being known for freedom, democracy, human rights, and the rule of law. I'm really glad you're here today, not just because I'm a fellow lawyer and Osgoode grad, but because what we're hearing is the incredible emphasis that we put on procedural fairness and justice generally. So, I'm really glad that you're here.

I would also ask you to remember that we're also concerned about the legitimate people who come seeking refuge in our country, who come with the scars on their backs, who now have to go through a 21-month or more process. The emphasis isn't all on law and order, although law and order is a very important emphasis. It's also about expediting the process for the people who really need it and need it fast. I would hope that we would all keep that in mind while we keep in mind your cautions about process.

• (1145)

The Chair: Thank you, sir.

Ms. Sitsabaiesan.

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

We talk about the people who come with the scars on their backs. How about the people who come with the scars in their minds and in their emotions, such as a five-year-old child who was traumatized and still has memories of war—but that's just my story.

Under Bill C-31 a designated foreign national found to be a refugee, unlike other refugees, will be subject to restrictions such as that five-year wait to apply for permanent residency. They won't be able to sponsor their families to join them, and of course, they will be subject to reporting requirements.

Are these measures justified in light of the claimant's mode of arrival? It's generally the mode of arrival that ends up having them designated. What is the impact going to be on these people resettling here in Canada if they can't get their permanent residency claim and they can't have their family come here with them?

The questions are for any of you, all of you.

Prof. Audrey Macklin: As I mentioned earlier, denial of family reunification delays and impedes integration. It has psychological, emotional, practical, social, and economic consequences for all concerned. Similarly, the lack of a travel document—note that this is not just travel to the country of origin, but travel anywhere outside of Canada—imposes hardship.

In addition, there's something that hasn't been mentioned: a five-year reporting requirement. People are required to report regularly to CBSA officers, and to answer questions and provide documents, without any information in the legislation about why the information is being sought, who it will be shared with, or how it will be used.

All of these cumulatively create and perpetuate forms of insecurity that are harmful and damaging not only to the people concerned, but to Canadian society itself. These are borrowed ideas from Europe, which, as you know, doesn't have a stellar record on integration of newcomers.

Ms. Rathika Sitsabaiesan: Do Barbara and Sean want to add to that?

Ms. Barbara Jackman: I think mode of arrival is not a legitimate basis for making a distinction between people. It just isn't—when they're recognized as refugees.

Ms. Rathika Sitsabaesan: Thank you.

Are any of you aware of alternatives to detention that are being used by other countries to handle mass arrivals of refugee claimants?

Prof. Audrey Macklin: We have a bail program in Canada that actually works with respect to detention. Interestingly, it's one that other countries actually seek to emulate.

The mandatory detention of large-scale arrivals has been modelled, I presume, on the Australian example. Australia has found that not only is it bad from a human rights perspective, but it doesn't have the desired objective of deterring future boat arrivals. So it's a failed policy. Australia has actually moved away from it.

As I said, the Canadian practice of facilitating various conditions of release seems to be the one that other countries are seeking to follow.

Dr. Sean Rehaag: Yes. Not only did Australia back away from mandatory detention for those reasons, but also, they found that it was extremely expensive. I think that's something that should also be kept in mind. Detention is very expensive, especially if there are other alternatives available.

Ms. Barbara Jackman: I know that in some places they've gone to geographic restrictions in terms of where they can live. They have to live within a certain city or something like that, which might be a more appropriate way of handling it in some instances, so you know where people are.

The Chair: You have one minute.

Ms. Rathika Sitsabaesan: I still have one minute? Fabulous.

I want to go back to the revocation of permanent residency status. Who would be subject to automatic PR revocation who would not be subject to it under the current law?

Prof. Audrey Macklin: The two examples I gave were of somebody who comes from a country and has lived in Canada for many years, and where, in that country of origin, circumstances have changed, 10, 20, or 30 years down the road. That person, under Bill C-31, would be subject to cessation of refugee status, as under the existing law, but also, under the proposed law, if refugee status ceased they would automatically lose permanent resident status. That's one.

The other circumstance is situations of so-called re-availment. The minister sounds like he's concerned about people who immediately get refugee status and go back, right? But re-availment—that is, going back to the country of origin—can happen 15 or 20 years down the road, not because they weren't fearful of persecution when they arrived in Canada and made the refugee claim, but again because circumstances have changed in the country of origin.

Those two bases of legitimate cessation are nonetheless not a legitimate basis for revoking permanent resident status, but under the overinclusive nature of Bill C-31, those people would be vulnerable. It would be simply a matter of ministerial discretion as to whether the minister decided to initiate proceedings against them.

• (1150)

Ms. Barbara Jackman: Can I just add that it's not—

The Chair: No, I'm sorry. We're out of time, Ms. Jackman.

Mr. Opitz.

Mr. Ted Opitz: Actually, it's Mr. Weston who is going next.

Mr. John Weston: Thank you.

Don't worry, Ms. Jackman. I think you're going to get a chance to provide that response.

I just want to remind us of the different types of procedural fairness that we've been alluding to or talking about. There's the charter. There's the Federal Court. There is an appeal built in. There are obligations to other countries or obligations through the United Nations. There's the democratic will of the Canadian people. There's also the role of Her Majesty's loyal opposition, which we're seeing played out here. In all of those things, we're striving for some fairness.

I would just like to quickly review what is sought in the amendments. These are things that we were told earlier this morning by Les Linklater, the ADM for strategic and program policy, and by Peter Hill, who is with post-border programs. They talked about these goals: reducing refugee claims from countries that generally don't typically send valid refugees; maintaining our obligations to other countries; cracking down on human smuggling; detaining people that arrive irregularly; removing individuals within a year when we get a negative determination; mandatory detention to investigate safety and security in ID aspects, which I want to come back to; and maintaining the best interests of the child.

So on the mandatory detention part, the analogy for me is that we're all sad if someone gets foreclosed upon in a mortgage situation. But we have to remember that if the mortgagee didn't have the opportunity to do that at the bank, the banks would never lend money to all of the legitimate borrowers, who would then not have houses and shelter. So we need to have provisions like this in order to make sure that the legitimate people can come through the system.

Would you like to comment on that?

Maybe you would, Ms. Jackman, since you got cut off.

Ms. Barbara Jackman: You don't need to have this in order to do it. On the concern about smuggling, the offences are increased in this legislation. That's great. On the concerns you have about people abusing the system, speed it up. Make it expeditious. That's the best way to keep the people out of the system who ultimately aren't going to succeed—because they end up being removed back to their country.

But to say that this is directed towards irregular movements.... Refugee movements are irregular. A refugee is by definition a person who can't seek the protection of their state. We've known forever—as long as we've had the Refugee Convention—that refugees arrive without proper documents and without passports and things like that. So to say that this is directed towards them means that it's directed towards refugees, to trying to stop refugees from coming to Canada.

Mr. John Weston: Ms. Jackman, I was in Mexico recently as head of the Canada-Mexico parliamentary friendship group, where I learned that people were advertising in the newspapers that a great way to get several years of free health and other services was to go to Canada and plead that you were a refugee. We had to provide some response to that, and the quick response was to impose a visa on those coming from Mexico, but the long-term response was a commitment to the Canadian people to improve our refugee system.

Mr. Miyagi in *The Karate Kid* says that the best way to avoid a punch is not to be there. If we can prevent people from making claims when they know they're not refugees, then the whole system will be improved. Surely the system will be improved, and the legitimate ones, the ones who you, in your passion and determination, plead for right up to the Supreme Court of Canada, will get through more quickly. I mean—

Ms. Barbara Jackman: I just don't understand how the five-year bar addresses that issue. I can understand what you're saying, but how does the five-year bar on recognized refugees address it? It doesn't.

Mr. John Weston: Well, we're acknowledging your question, and it will be something that we will be reviewing, and you can be sure.... We have another 60 or so witnesses coming, so we'll have opportunity to consider that.

Ms. Barbara Jackman: Well, you're going to hear it—a lot.

Mr. John Weston: Do you have any more comments, Mr. Rehaag?

Dr. Sean Rehaag: You mentioned the case of Mexico. I agree that a fair, effective, and fast refugee determination process is much better than a visa requirement imposed on Mexico. I think everyone agrees with that.

That said, though, the mere fact that grant rates for Mexico are somewhere around 15% means that there are quite a few people who are coming here and making unfounded claims, but also that there are still literally hundreds of people in Canada every year who are recognized refugees from Mexico. These often include people making claims based on sexual orientation and people facing gender-based violence. Mexico is not safe for some people.

So then the question is this. Why should the mere fact that there are some unfounded claims coming from one country mean that people who have well-founded claims—sexual orientation and gender-based claims—shouldn't get access to a fair process, with an appeal?

• (1155)

The Chair: Thank you.

Mr. Menegakis.

Mr. Costas Menegakis: Thank you very much. I think Mr. Opitz was next.

Mr. Ted Opitz: We're going to share, right?

The Chair: That's fine.

Mr. Ted Opitz: I'll start.

There are more than just a few bogus refugees that come out of this system. We have 25% coming from the EU. Not everybody who

comes over here and claims refugee status is a victim, quite frankly. A lot of them are looking forward to taking advantage of our system. Some actually tell the CBSA officers that they're here because of the money—bold, direct, and out front.

Not only do we have a right to protect the safety of this country and the credibility of our immigration system, but we also have a responsibility to Canadian taxpayers to take a hard look at what a lot of this costs them as well, and when you have a lot of bogus refugee claims, then there are a lot of costs. I think you would have to concede that—that there are quite a number.

So there is a balance between what we need to have as the rights of the refugee.... I think we're all in agreement that this is a very generous country. My parents came here after the Second World War. They couldn't go back. If my dad had done so, he would have had a bullet from Mr. Stalin.

I get all that. That's ingrained in our family. But a lot of people do take advantage of this, and not everybody is a good guy. There are a lot of smugglers. A lot of the smuggling turns into trafficking. The trafficking turns into people who basically have invisible chains and are stuck in a system where they are put into hugely dangerous situations. We also have a responsibility as a country to make sure that this doesn't happen to those victims, so that's why we have to vet some of those processes.

What would your comments be—we could take all three of you in turn—on what the balance should be between accepting refugees and the safety of the Canadian public, keeping in mind bogus refugees, some people who are criminal refugees, and potentially, terrorist refugees?

Dr. Sean Rehaag: I think it's clear that everyone agrees that finding a way to deal with unfounded claims is important. I think the Balanced Refugee Reform Act tried to deal with that concern by expediting the process to make sure that people wouldn't be here for a significant amount of time if their claims were unfounded. I think that balance worked reasonably well.

I think it's important when we have these conversations here in Parliament and in the public that we not use inflammatory language, and I think the term “bogus refugees” is in some ways problematic. The reason for that is that there are many people—

A voice: [*Inaudible—Editor*]

Dr. Sean Rehaag: There are many people who make claims that are unfounded, who may face risks back home, but there's some question as to whether the degree of risk is sufficient. If you have a 1% chance of being killed back home, is that enough? If it's a 2% chance, if it's a 10% chance.... So the mere fact that a claim is not successful does not mean that it's bogus, and I don't think it should be referred to in those terms.

Mr. Ted Opitz: Does anybody else want to weigh in?

Prof. Audrey Macklin: Every system you devise will create false positives and false negatives; that is to say, no system will perfectly capture everybody you want included and everybody who you think should be excluded.

The discussion I think thus far has been focused almost entirely on those who are perceived to be those who ought to be excluded and how the system falsely includes them. Very little attention has been paid to those who the system currently excludes who ought to be included, and how many more people will be excluded under a new system who ought to be included. That leads us back to discussions about the necessity of appropriate appeals and other kinds of recourse.

But on this idea of the bogus refugee that looms so large, let me just pick everybody's, you know, the government's favourite bogus refugee: the Roma. There's all sorts of evidence that the Roma face extraordinary discrimination. Whether that discrimination amounts to persecution in every case, in some cases, or in many cases is open to question.

But for somebody who faces extreme discrimination, for example, to make a refugee claim and to have a decision made that says, you know, you face discrimination, but it's not severe enough to amount to persecution. That person may not be a refugee. But to put them in the same category of bogus as somebody who just wakes up in the morning and decides they're just going to come to Canada and make a refugee claim—

• (1200)

Mr. Ted Opitz: But there are people who wake up in the morning

—
Prof. Audrey Macklin: Right, but—

Mr. Ted Opitz: —and decide they're going to do that.

Prof. Audrey Macklin: Okay. So now you have—

Mr. Ted Opitz: So how do you counter that? There are a lot of people—

Prof. Audrey Macklin: You have—

Mr. Ted Opitz: —who just want to take advantage of our generosity.

Prof. Audrey Macklin: And there are a lot of—

Mr. Ted Opitz: You can't dismiss it by saying, well, there are degrees of variation. The word "bogus".... Bogus is bogus. There's no separation of the term. I'm sorry. It's false.

Prof. Audrey Macklin: To say that our system.... Let me just give you an example from a different system.

The Chair: We're out of time. We're really getting excited here, and it's time to go, I think.

Ms. Jackman, Professor Rehaag, and Professor Macklin, your contributions have given the committee food for thought, and we thank you for taking the time to speak to us. Thank you very much.

This meeting is adjourned. We will reconvene at 3:30 this afternoon.

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