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# Standing Committee on Citizenship and Immigration

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**Chair**

**The Honourable Andrew Telegdi**

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## Standing Committee on Citizenship and Immigration

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• (0905)

[English]

**The Chair (Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.)):** I call the meeting to order.

Here's a little business for the committee. Today I will be presenting the travel budget to the subcommittee on budgets of the Liaison Committee. If we are successful in acquiring the funding, I will then be asking the House leaders for an order of reference for the committee to travel.

I would like at this time to ask the critics of all parties and the vice-chairs to inform their respective House leaders that this request is coming forward. I believe all parties are onside with the travel, and it would be nice if we received permission before the House adjourns for the Christmas break so the clerk can start calling witnesses so they have time to prepare their submissions. Last time around there was not quite as much notice as they would have liked.

It is the intention of the committee to travel across Canada in February and March and engage Canadians on three topics, the first being the proposed new citizenship legislation.

For witnesses here today, I inform you that this committee has produced a report, which we tabled in the House on Tuesday, and it gives guidelines to the minister on what we would like to see in the Citizenship Act. I underline that she asked for this report, we gave her the report, and we expect to get the report back early in the new year. We'll get the bill after first reading, which is very significant because it gives a lot more leeway to the committee in terms of making changes. So look for it on the government website; it's on there and I think you'll be pleasantly surprised and happy, but I'll leave that to you.

The other issue we'll be travelling on is the recognition of foreign credentials and experience, and I'd like to get the word "foreign" changed to "international". The third topic we have identified so far is family reunification.

Anyway, I ask the critics and the vice-chairs to put that forward to your respective House leaders.

This morning we have three groups before us, and we're going to start with the Metro Toronto Chinese and Southeast Asian Legal Clinic, to be followed by the Canadian Council for Refugees and then by the Human Rights Action Committee.

We're going to keep to a timeframe of ten minutes for the presentations. That's important, because we want to engage the committee as much as possible.

Anyway, we'll start with Avvy Yao-Yao Go.

• (0910)

**Ms. Avvy Yao-Yao Go (Director, Metro Toronto Chinese and Southeast Asian Legal Clinic):** Thank you.

First of all, I would like to thank the committee for giving us this opportunity to present on three of the eight priorities this committee has identified. I would like to commend the committee for identifying these priorities in your work plan. All of these issues are very important to the communities we serve at the clinic.

My name is Avvy Go, and I'm the clinic director of the Metro Toronto Chinese and Southeast Asian Clinic. With me is Clara Ho, the staff lawyer. We'll try to divide our presentation into three parts according to the priority issue. I'll touch briefly on this family unification issue, I'll turn it over to Clara so she can deal with some of that issue as well as with the refugee appeal issue, and then I'll close with the issue around the non-status immigrants.

With respect to family, I just want to start by saying that for a long time, up until about ten or fifteen years ago, family immigrants actually made up the majority of all the immigrants who came to Canada. Up until the early 1990s they were more than 50% of all immigrants, but since then the number has gradually been declining, until this year, I believe, they're around 25% of all immigration to Canada. So certainly, there has been a shift away from family immigrants towards the skilled workers and the business class immigrants.

With the exception of "spouse"—same-sex and common-law spouses and so on—the definition of "family" has not really changed. It's very much a western, nuclear family concept. It doesn't recognize extended families, which are very common in many cultures, including Chinese and Southeast Asian cultures.

There has been an increase in the limitations on who can be a family member and who can sponsor family members. In fact, for the first time, under the Immigration and Refugee Protection Act there's a bar to family sponsorship for those who are on social assistance. This, we believe, is indicative of the move away from family sponsorship, away from recognizing the importance of family reunification, and more and more towards immigrants being an economic kind of issue as opposed to a humanitarian kind of issue.

There are many reasons we think the family sponsorship is problematic, and the whole system is problematic. I'm just going to highlight some of them—and I'll leave some of the issues to Clara as well—for instance, the whole issue about proving who your family is. It goes to the issue of defining who is a spouse and proving the relationship to be a genuine relationship, as well as proving who your children are, including adopted children.

Then there's the spouse. We find in our practice, where we help Canadian citizens and immigrants who want to sponsor their spouse from abroad, that the whole process of determining who is a spouse and who isn't a spouse is a very subjective process. It's subject to the biases and prejudices of individual visa officers, particularly in our case, where there are many immigrants from China. Oftentimes we come across cases where you wonder if the case was turned down because they suspected the relationship was not genuine. I remember one of the cases. Because the woman who the Canadian citizen wanted to sponsor was three years older than he was, that triggered an alarm bell—just because the woman was older than the man.

So a lot of cultural assumptions are made when relationships in a certain culture are looked at. Sometimes the assumption is made by the officer himself or herself as to who should be a family member or a spouse, who he or she would look upon as a spouse or not a spouse, so the whole process is very subjective.

When these cases are turned down, people have to appeal. Ultimately, sometimes they will win the appeal, but by then the family will have been separated for years; it causes a delay in family reunification. It's also a costly process. Some of them may be lucky enough to have legal aid lawyers, but others have to pay their own lawyers to do the appeal.

In terms of adopted children, we find unequal treatment of children who are adopted by Canadians who have no relationship to them as opposed to children who are known to the adoptive parents. We know, for instance, that more and more Canadians, because of the difficulty of adopting children in Canada, are turning to China and adopting Chinese girls as an option. In our experience those cases are processed and approved very routinely. There is no question of the genuineness of the relationship even though the children are not actually known to the parents and have no ties whatsoever, including cultural ties.

But then, when it comes to parents adopting children who are actually known to them.... And it's very common in certain cultures and certain countries like China and India, where we tend to adopt children who are actually known to the family. But they have to go through a lot of hoops just to prove the adoption is not for the purpose of immigration. I think there is certainly a sort of double standard operating according to the type of adoption in these kinds of situations.

• (0915)

I'm going to skip over to some of the delays, and I know my friends are going to deal with that as well.

We find that one of the biggest causes for delay in family sponsorship is the unequal distribution of resources among visa offices. If you look at family sponsorships, you see most of these cases are coming from countries in Asia, Africa, and so on, but these

are also the countries where they have the least resources allocated to the visa offices, which causes long delays in processing time. It will probably take double the amount of time for someone to sponsor a family from China versus someone who wants to bring a family from London, for instance.

I've come across a case; it's not a family case but is an independent immigrant case. My client is Chinese but he happened to be living in Germany at the time he applied for immigration to Canada. It took him three months to come to Canada from the time he applied to the time he received his visa. If you look at my other Chinese clients, you see it takes them three to four years on average.

On that note, I'm going to turn it over to Clara to deal with some of the other family issues.

**Ms. Clara Ho (Staff Lawyer, Metro Toronto Chinese and Southeast Asian Legal Clinic):** Good morning, members of the committee.

Reiterating Avvy's points, I thank you for inviting us here this morning.

Just briefly, Avvy mentioned the issue of financial requirements for family sponsorship. We find it highly concerning that there is the financial threshold of the low-income cut-off that is required for people who want to sponsor their family members, with the exception of spouses and dependent children. At the clinic we see this problem resulting in poor families not being able to bring over family members unless they meet the financial requirements. In the case of individuals who are on social assistance, they are prevented from sponsoring their family members entirely. This, we feel, is a breach of the fundamental human right of being allowed to be reunified with one's family here in Canada.

Another issue of concern, one I've seen many cases of at the clinic, is the exclusion of family class. If individuals who have come to Canada fail to indicate family members on their applications at the time they apply to become permanent residents, they are later prevented from sponsoring them. Now, we see this in situations where for various reasons dependent children might not be included in these applications at the time these future sponsors come to Canada. The reasons include, for example, the fact that the sponsor might not have custody of the child at the time they come to Canada, but later on the custodial parent in the home country might give up that custody. Essentially, the provisions of the current legislation then prevent the sponsor from sponsoring a dependent child who is a biological child.

In another case we have at the clinic I have a client who is now prevented from sponsoring a child who was born as the result of a sexual assault. She later gave the child away for adoption by foster parents. She came to Canada but they were later reunited, and the issue now is that she is prevented from sponsoring this child, who is her biological child, because she didn't declare the child on her original permanent resident application. This woman's application to sponsor her daughter was refused on these grounds simply because at the time she didn't know where the child was. Given that fact, it's unlikely she would have put the child on the application. This results in an exclusion from sponsoring, and this is a concern we have with respect to the current legislation.

In addition, I'll just touch briefly on the issue of the refugee appeal division. We support the comments that will be made later by our colleagues from the Canadian Council for Refugees. We feel the implementation of the refugee appeal division is crucial, and this division has yet to be implemented.

The current system's inability to correct its errors is a problem, we find.

That is the end of my submission.

Thank you.

• (0920)

**The Chair:** Thank you very much. We'll come back to you in questions.

Next we're going to go to the Canadian Council for Refugees.

**Mr. Nick Summers (President, Canadian Council for Refugees):** Thank you.

Good morning. It's nice to meet many of you again, and there are a few people I haven't met before.

I want to thank the committee for inviting us to speak today. Let's say it's gratifying to be asked to come and speak; normally we have to ask to be heard. I hope this is a sign of the future for a good working relationship between the committee and our organization.

I'd like in particular to thank and acknowledge your vice-chair, Ms. Faillie, who is to my knowledge the first sitting member of Parliament who's actually come to one of the Canadian Council for Refugees' consultations. I think and I hope she found it a very welcoming experience and a very educational one.

I would just like to say there's a standing invitation to any member of the committee to come and do likewise or have one of your staff come. I think you will find it very helpful to your work here.

When we were asked to come and speak with you, the committee identified a rather large shopping list of issues. I will attempt to very briefly touch on them, and I will also pass it over to my colleague, Amy Casipullai, who is the vice-president of the Canadian Council of Refugees and who will wrap up our submission.

There are a couple of issues we want to talk about, but first, for those of you who aren't aware of what the Canadian Council of Refugees is, I'd like to explain that we are a national umbrella organization made up of approximately 180 to 190—we're closing in on 200—organizations all across Canada. They're immigrant- and refugee-serving organizations whose main purpose is to protect the rights of refugees and immigrants.

One of the main issues we are facing today is the lack of an appeal for refugee claimants. As I'm sure most of you are aware, in the Immigration and Refugee Protection Act, passed by Parliament and implemented in the summer of 2002, there is a provision for a refugee appeal division to be added onto the Immigration and Refugee Board. The purpose of that division was to hear appeals on their merit of decisions of the Immigration and Refugee Board. This was an integral part of the scheme in the act for dealing with refugee claims, and the failure of the government to implement it has caused considerable problems both in the implementation of the act and in

how the process works. But more importantly, it has caused serious problems for the rights of refugee claimants.

In the old Immigration Act the Immigration and Refugee Board consisted of a panel of two members who heard every refugee claim. If one of the members said no and the other said yes, the answer to the refugee claimant was yes, and this was known as giving the claimant the benefit of the doubt. It was not a perfect system, but it did at least protect a claimant from somebody having a bad day or in cases where, unfortunately, some members of the refugee board were not—and are not—particularly competent. There have been changes to that competency. There are still some, but the system has been changed for the better to fix a lot of that.

However, under the new act we now have hearings before one board member, and unfortunately, because we still have some board members who aren't particularly competent and because people simply have bad days or just don't get an issue sometimes, we have refugee claimants whose claims are being rejected, and they have no appeal from that rejection.

You will hear the minister tell us at some length that there are 20, 30, or 40 levels of appeal, depending on which press release you read. But the fact is, there are no appeals. There is a judicial review of a refugee board decision. That is not the same thing as an appeal. It is very limited and very few people succeed. There are a number of procedures for not being removed from Canada and for entering the immigration system, but again, they don't deal with the merits of a refugee claim, and it is very rare that they are successful for refugee claimants.

So we have a large number of people who are being rejected without any remedy, and we see some very strange results. There's a case right now in Canada of two Palestinian brothers: same town, same situation; one was accepted by the refugee board, one was rejected, and there is no way to correct that situation.

• (0925)

There's a lot more I could tell you about the refugee appeal division, and hopefully you'll ask me or my colleague some questions about it.

We also wanted to deal with the issue of delays overseas. There is the issue of private sponsorship, and we have distributed a paper entitled "No Faster Way?", in which we have attempted to set out a number of problems with the private sponsorship program and give some case studies.

We have people, church groups and community groups, who have made private sponsorships here in Canada and who have identified people who have been recognized as refugees overseas. We have a program whereby they should be able to come to Canada, yet due to a lack of resources and a lack of political will, it's taking two, three, or four years in order to get them here. This is causing considerable problems, not only for the refugees overseas who are having to stay in severe conditions, but it is eroding what has been recognized internationally as a very good program, our private sponsorship program. We are losing public support because community groups lose heart and lose interest when it takes four years from the time they get all geared up to bring somebody in to when the person finally arrives. Many of the people have moved on, have got into other projects, etc.

We are also very concerned about the length of time it takes to reunite refugees with their families. In the Immigration and Refugee Protection Act there is a provision that families of recognized refugees can come to Canada to live with their spouse, their father, or their mother, yet it is taking us one, two, and sometimes three years to bring these families to Canada. There is really no good reason for doing that; it is simply process, and we are recommending that the families be brought to Canada and processed here to get them out of refugee conditions and get the families here integrated much more quickly. A family can't move forward while they're separated.

I'm going to turn the mike over to my colleague.

**Ms. Amy Casipullai (Vice-President, Canadian Council for Refugees):** Thank you, Nick.

First, I want to say again that we appreciate the fact that we've been invited to present some of our concerns to you. Again, some of you I'm seeing for the first time, and I hope, as Nick said, that you will take the opportunity to come to future CCR consultations.

I want to say it's important to note that we share concerns in general with the people from the clinic as well as the Human Rights Action Committee.

I'm going to talk to you very quickly about three items just to follow up on what Nick has been talking about. First, we are concerned about people without status. There are a significant number of people in this situation who are living and working in Canada, who are making a strong contribution both to our economy and to our society—they are members of our society—but who are denied the basic rights and privileges other members of our society have, whether it be workers' protection or extra education for their children.

I also want to point out, as a follow-up to what Nick was talking about in terms of the lack of a refugee appeal division, that this is one of the reasons many refugees are in limbo in Canada, because they have no recourse. I don't want to get too much into that because I know Sanjiv is probably going to talk about it a little further on.

I want to move on to the safe third country agreement. It's an agreement to which we remain fundamentally opposed, and I think we've been fairly clear on that. It's due to come into effect December 29, and it means refugees who seek protection in Canada will be sent back to the U.S., where in some cases they might be denied protection. Now, Nick just mentioned the case of two Palestinian

brothers who were from the same refugee camp, where one was accepted and one was rejected. Well, the second brother, the brother who was deported, was removed to the United States, where he's currently in jail. I think that speaks to our concerns, that we are not quite certain refugees will receive the protection they need if they are sent across the border.

We also understand that the U.S. House of Representatives has passed a bill with provisions that will reduce refugee protection. If those provisions are adopted, then it will be even clearer that the U.S. is not a safe country for refugees.

In the meantime, the government is rushing to implement this in the middle of the holiday season, December 29. We understand that many of the staff at the borders have not even been trained in what they are supposed to do in terms of its provisions. We are concerned also because the border is already closing as refugees rush there to try to beat the deadline and there are very limited resources in the border posts to process these cases.

I want to come to my final point, which I think sums up a lot of the concerns you raised, which is refugees and the security agenda. Primarily, we're deeply concerned that Canada is turning away from the better parts of our tradition, one we should be proud of in terms of refugee protection, because of an excessive and, we think, irrational attention to the security agenda. We want to point out that refugees are not security risks. They are people who are seeking security in Canada, and that's something that's very important and we shouldn't forget. Yet they're being unfairly associated with security threats and made to pay the price of the security agenda. We believe security is important, but we think refugees are being unfairly penalized.

Another area of concern is the government's inclusion of a commitment to reform the refugee system; however, it is in the context of the security agenda.

I'm just about out of time, so to sum up, I want to say I echo everything my colleagues have said and no doubt what Sanjiv is going to say in raising certain issues as well.

Thank you.

● (0930)

**The Chair:** Thank you.

Mr. Kumar.

**Mr. Sanjiv Kumar (President, Human Rights Action Committee):** First of all, I would thank the chair, who has given us the opportunity to present our concerns.

The Human Rights Action Committee is an organization of refugees, by refugees, and for refugees. Today in this hall a lot of the audience present here are people who have no status in Canada, and they have come to express their feelings. There are hundreds and hundreds and hundreds who can come as witnesses to explain the situation, but Mr. Bill told me there's limited accommodation. But there are people who are really suffering.

I really appreciate that Parliament is taking serious consideration of the people without status, to regularize them, and of refugee issues. But what will we do with the people who have suffered in the past because of the mistakes of the Immigration and Refugee Board commissioners? If they're removed from the country, after that, if we go for a regularization program or if we go once the refugee appeal division has been implemented, how will it be beneficial?

So it's my appeal to all the members of the standing committee to present a motion to do whatever is required in the sense that, first of all, the deportations of the people should be stopped so those who have suffered in the past because of the mistakes of IRB commissioners should not doubly suffer, and second, that once Parliament does something to correct the situation, they are not there. We know that every day Canada Border Services Agency removes scores of people from Canada, so it's very important to consider this aspect, which I would like to highlight.

There are many cases I have, but there's limited time. I have a person sitting here, Mr. Sharma, whose case was denied by IRB. We do not want any intervention from the committee for these individual cases, but we want to bring this to the attention of the committee so they'll have real cases. His commissioner writes that his wife was raped and that his wife said that in the hearing, but his wife was never present at the hearing. Secondly, he never wrote or said anywhere that his wife had been raped. There were other issues. When a person writes that in a decision like this, it maybe shows that when she's making a decision, she's thinking about some other cases. This is the situation.

There's another person who's sitting here. His case was denied because the commissioner said he has a passport and he has come on his own passport, so he has no problem. And there's another person here sitting in this audience who is being denied a refugee claim mainly because he doesn't have a passport; they don't know the identity of the person. So it's heads I win, tails you lose.

This is a situation that sends a clear message to the people that they are unwelcome. This is something against the values of Canada. Canada is the only country to get the Nansen award from the United Nations High Commission for Refugees for serving refugees, so it's a safe haven for all those who face persecution.

Not only that, I wrote a letter in May 2003 to all members of Parliament. I would have been very happy if Inky Mark had been here today, because he responded to my letter and sent a letter to the immigration minister. Because of that, wonders took place. When I was refused by IRB, I wrote all the facts to all the members of Parliament, and ultimately IRB reopened my claim and they accepted me. Even the IRB chairman wrote to me that this, this, this, blah, blah is done, so they cleared my case. But the most important thing was they cleared it to shut my mouth.

The issues I raised still stand today. In that letter two years back, approximately, I wrote questions. I'm not naming those people, but if tomorrow I'm asked to name those things, I can name them. The portion is that 80% of cases are accepted; there's a counsel or a lawyer, a commissioner of IRB, for whom 80% of the cases are accepted, and his 80% of cases or more are rejected by another commissioner of IRB. What is this? There is one commissioner who accepts 10% of the cases from one country, and there's another

commissioner who accepts 90% of cases from the same country, from the same area. What is this?

● (0935)

This shows that there is clearly a lack of consistency. Not only that, they're refusing claimants who are doubly exploited, in the sense that with all the appeal mechanisms and systems available to them, there is no solution. Rather, it only helps them to be exploited by their lawyers, and so on and so forth.

For one of the persons who is present here, his documents were not submitted by his lawyer to the IRB and his case was rejected. The IRB commissioner did not accept the documents on the day of hearing. Later on in Federal Court, another lawyer did not submit his application card. After that, in another application, that person hired another lawyer—a well-known lawyer I won't name—and he called the press that this gentleman's case was not represented by his consultant in the court. That same lawyer then also did not submit his document to the Federal Court.

Do you know what happened in the end? The Federal Court said that claimants are responsible for their attorneys' behaviour or acts. That person therefore complained about the lawyer to the bar council, and the bar council said it couldn't give any remedy. They said they would see, they would censure him, they would analyze. For two years, the bar council didn't do anything.

So these people are highly exploited, and you need to take care of them.

There are many more issues. I have brought certain things for all the members of the standing committee, and we'll be giving them to you at the end of the day so that you can go through them. A few more packages we will be submitting to you soon. I have many DVDs and CDs that have videos of the people who have been suffering.

There's one person I met in Toronto. For nineteen and a half years, he has been living here in Canada without any status. There are children who came from a country, studied there for six years, and now they have been here for six years and study here. They've forgotten their own mother language. They learned French in Quebec. Now their parents are going to be deported and they are going to be deported. There is a clear-cut violation of the children's rights.

We want to say many things, but we have to respect the time of the committee. I would like to request that the recommendations that are required...

One more important issue that I have followed is that many times it is said that political appointments to the IRB are a problem. Yes, I do understand they're a problem, but the bigger problem is the bureaucratic appointments of CIC. CIC is more brutal with the people than the IRB commissioners are, so I think political appointments are not a problem. The problem is that people who should be appointed to the IRB are those who have the qualities of head and heart, to represent and to make decisions about the refugees, rather than having technical knowledge or having bureaucratic knowledge.

The Human Rights Action Committee feels the people without status should be regularized. The refugee appeal division is one of the solutions, but not the perfect solution.

Another important thing is that CIC people should be made accountable—and I'll give an example. For one person who was to be deported on November 6, we sent all the documentation to CIC people and to the Canada Border Services Agency. They said they would respond to us the next day. They never responded.

In a Victoria conference of the CCR, I raised this issue with the vice-president of the Canada Border Services Agency, Madame Claudette. She apologized publicly and said this was not good. She promised me that she would respond to me by the next Monday. Today, more than twenty days have passed and nobody has responded. So the CIC people need to be made accountable. That's very important.

Last, but not least, we believe very strongly that for those people facing deportations, it should be stopped right away. It should be stopped so that a parliamentary committee can deliberate on the issues, solve the problems, and correct the sickness, and so that those people who would have benefited are not deported.

Thank you very much.

• (0940)

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

We're going into question-and-answer rounds. The first round is seven minutes for the question and the answer, so let's try to make sure we have time for the witnesses to answer.

The first one to show us the way is Mr. Jaffer. I might mention that Mr. Jaffer came to this country as a refugee, just like me. I guess we're the two in the House.

Mr. Jaffer, go ahead.

**Mr. Rahim Jaffer (Edmonton—Strathcona, CPC):** Thank you, Mr. Chair.

I want to start by thanking all of the presenters today, our witnesses. I think you guys are doing excellent work despite some of the challenges we have in our current system.

As our chairman said, when I think about my family coming here as refugees in the early seventies, I know times have sure changed since then. The process has gotten much more complicated and is maybe not working in the best interests of refugees, as you were highlighting. I would therefore like to follow up on a couple of points.

Mr. Kumar, you were talking about one issue close to the end of your presentation, and I think it speaks to the issue that, clearly, the legislation currently in place on the aspect of the appeal process is not working. Obviously, that needs to be reviewed and it needs to be evoked in some form in a better way.

One of the things I'd like to ask the panel to clarify...you started to talk about it, Mr. Kumar, when you said it's not only the issue of the appointments of the judges, but also the CIC appointments. Maybe the process needs to be reviewed there.

I'm curious about any suggestions you may have, because there obviously have been accusations that a lot of the IRB judges are political appointments. They may not be necessarily best suited to review cases or they may not be in the mindset, I think someone said, to review cases properly. Whether it's a CIC process or the IRB judge process, what would your suggestions be that we can look at in order to make those more accountable?

I know we've suggested in the past the idea of having an independent board to review potential appointments and their qualifications, and that we can then put those people in. It's then removed out of the political side completely, and maybe Parliament later can review the list and vote on it. But what suggestions would you have, outside of the appeal process?

And then I have one more question on the appeal side of the issues.

**Mr. Sanjiv Kumar:** First of all, when I said "political appointments", I very clearly said that political appointments will be good enough because the most important thing is that with the people you are appointing, it's not only what legal knowledge they have or what other knowledge they have, they should have the reputation of people working for refugees across the world anywhere. It is not necessary that they should be Canadian citizens. It should be those people who have done some credible international work on refugees, who understand refugees, who have been refugees. That can help a lot.

Many a time with the people who are appointed, when I go through the appointments of the IRB, I find many lawyers are there. They may have very good technical knowledge, but they may not have those qualities of head and heart, which are very important ingredients required to make decisions about refugees, because refugees, when they come here, don't have any documentation to prove themselves.

So there are many good things in whatever procedures are given, but it would be very helpful if this background of the person is considered.

• (0945)

**Ms. Avvy Yao-Yao Go:** Can I add a few comments with respect to the immigration side?

In terms of one of the processes in place now for people who have failed the refugee process, since there's no right to appeal, there is a pre-removal risk assessment process, or PRA process, that is done for people who have failed the refugee process. Prior to their being removed from Canada, they can apply through this PRA process to have their risk assessed. These assessments are done by immigration officers.

The success rate for PRA is three percent. Three percent of all the failed refugee claimants, including one of the Palestinian brothers, would go through this process. You wonder why it's only three percent, given all the problems we have talked about with respect to refugee determination.



I'm not sure whether it's a political appointment or whatever appointment. Certainly training of officers is an issue, and the kinds of guidelines and policies in place to assist the officers in making these PRA decisions would be an issue. It's a combination of various factors—the background, the knowledge, and whatever that the officers have—with respect to country conditions, with respect to various international conventions. All these things are important in influencing their decision-making.

**Mr. Nick Summers:** Is there any time left?

**The Chair:** Actually, you still have two and a half minutes.

**Mr. Nick Summers:** I'll see if I can fill them, because there are a number of issues.

With regard to the political appointments, in December of last year the government announced it was going to reform the system. Indeed, there has been a lot of work toward reforming that system. The IRB has done some very good work in revamping its application process. In fact, I was invited to sit on a committee that reviews all applications, and I can tell you that's coming along and that the quality of applications has indeed improved quite considerably. People who do apply are being tested on a number of qualifications, including cultural sensitivity.

I agree with my friend. A lot of the applicants are lawyers. Being a lawyer myself, I don't perhaps see that to be as much of a detriment as my friend might. In fact, it is interesting that in the testing that's being done, some of the best applicants are lawyers and some of the worst are. It does cross a great number of different experiences and backgrounds.

To pick up on the issue of CIC appointments, these are basically people who work for the public service. How they come to their jobs depends on when they applied and what their experience within the civil service is. The problem is that many of the people who are being asked to make life-and-death decisions have absolutely no training for that sort of work.

The pre-removal risk assessment, the PRA process, was never designed to be an appeal process. It was supposed to be a quick review just before somebody was removed, to make sure they're not being sent back to war or some change of circumstance in their country. Now the people who review these cases are being asked to review massive amounts of documentation, because people, not having a proper appeal process, are using the PRA process as an appeal. The people who do it are simply being overwhelmed. They don't have the training and they have no time to get the training. So there are serious problems with that side of things.

**The Chair:** Next, we go on to Madame Faillie.

**Ms. Meili Faillie (Vaudreuil-Soulanges, BQ):** I'll ask the question in English.

I would like you to clarify for the committee what the international bodies are thinking of Canada's actual treatment of refugees, the UNHCR, Amnesty International, or other bodies that are recognized bodies that could make a judgment.

**Mr. Nick Summers:** There have been a number of international organizations that have commented on our refugee system. First off, I might note that there have been many international organizations and countries that have come to look at Canada's refugee system and

have found it to be very good in its basics. The Immigration and Refugee Board process has been copied in a number of countries around the world. In fact, the chair of the IRB is often asked to go to speak in other countries to tell them why Canada has been able to make the system work, which is a considerably different view from what we get here in Canada.

There are problems with the system. The international organizations—the United Nations High Commission for Refugees, the Inter-American Human Rights Association, I believe Amnesty International, and maybe one or two others, but I'm afraid I don't have the report in front of me—have commented negatively or have criticized Canada for not having an appeal on the merits for its refugee determination system. It is considered to be a fundamental part of any refugee determination system, so that is a bit of a black eye with regard to the IRB internationally. Otherwise, the IRB system actually does work very well.

And it's in the legislation. When the legislation was brought forward and consulted on quite widely—and a number of us were at those consultations—it was clear that this process that was in the new legislation was a whole. It was meant to work together. When you take the heart of it out, then the process doesn't work as well. That's part of what has been criticized.

• (0950)

**Ms. Meili Faillie:** Avvy wanted to add some comments when she was testifying. I would like to give her some of my time so that she can move on with the remaining part.

**Ms. Avvy Yao-Yao Go:** Thank you.

Before I do that, I just want to comment that, if I remember, the Inter-American Commission on Human Rights came to Canada several years ago to look at the whole issue around deportations and did a pretty damning report about how we are treating some of them—and among those would be failed refugee claimants as well. They had some concerns about how the whole deportation issue was being carried out. As well, there was a special report on...I can't remember whether it was migrants' rights or children's rights. But they had come to Canada and looked at the issue of detention of children in our system. Those are some of the issues and concerns that have been raised internationally.

The issue I didn't get a chance to talk about is the whole issue of non-status immigrants, and I just want to echo all the things that have been said. We need to recognize the non-status. The problem of non-status immigrants is a problem of our own creation. People are here without status because of the failure of the system to recognize them as family members or to recognize them as refugees when there are truly real humanitarian and human consequences to having these people being removed from Canada. As a result, they are here with us today. At our clinic we see them coming in every day, many working in restaurants and factories. We rely on their cheap labour to make our life easy. And I'm one of the beneficiaries of that system as well.

We also want to acknowledge that Canada, from time to time, over history, has recognized that problem and has from time to time tried to correct the problem. The first example of the amnesty program in Canada was in fact a program to regularize the status of the Chinese immigrants who were here illegally, because at the time there was a law to prohibit a certain form of Chinese immigrant. In the 1960s, we brought in an amnesty program just to regularize the so-called Chinese paper sons. They were called paper sons because on paper they were somebody else's sons, and that's how they came to Canada. We had 11,000 who became regularized as a result of that program.

There were programs in the 1960s and the 1970s. As a result of the adjustment program in 1972, for instance, 39,000 people were regularized in Canada.

More recently, our clinic was involved in the DROC program, which is the deferred removal order clause. That was a program brought in in 1994, because at that time there were again refugee claimants who were found not to be refugees, but at the same time, because of conditions in their country of origin, these people would not be removed to their country of origin. At that time, those countries included China and Iran. They are allowed to stay, but they are in limbo, they have no status. So in 1994, again, Citizenship and Immigration Canada brought in the DROC program to allow these individuals to apply for status, and I think over 4,000 of them were regularized.

I think it's now time again for us to reflect on the problems that we have created as a result of all these barriers and all these flaws in our system, and to think about the fact that it may be time again to bring in another form of regularization so that the people who fall through the cracks as a result of our own mistakes can have an opportunity to have their status regularized. Whether or not they are regularized, they are living here, they have their families here, and their children are going to school after fighting a lot of hurdles. If the children are Canadian-born it's easier, but if they're not Canadian-born it takes a longer time to convince the school board and what have you. But eventually they are here to stay.

So from an economic perspective, from a security perspective even, it is better to allow these people to go above ground rather than allowing them to stay underground for an indefinite period of time. I would therefore urge this committee to look at the whole regularization program.

We have brought a submission, but I know it's not being distributed because it's not translated. I hope it will be distributed after it's translated. We have submitted a number of principles that may be helpful in guiding that process.

Thank you.

• (0955)

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

We move on to Mr. Siksay, for seven minutes.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Mr. Chair.

I appreciate that you've all come this morning. Seven minutes is such a short time when there are so many issues on the agenda.

I also want to say that I appreciate, Sanjiv, that you brought so many of the people you work with this morning. It's quite amazing to see how many are here. I realize there are many more than the folks who are here, so that's fabulous, amazing.

I have questions for all of you. I'm probably going to get only two of them in, and then we'll see if we get a second round here.

Avvy, you mentioned the switch from family class sponsorship to more economic class immigration. I'm wondering if you could talk a little bit about how you might change the definition of "family class". You mentioned that it doesn't recognize extended families and that kind of thing. I have a private member's bill that grows out of an NDP commitment to expand, once in a lifetime, the definition of "family class", or to allow some expansion of that in any case. Could you talk a little bit more about that?

As the second question—and I'll get you guys to share your time, so that all of the pressure is not on us over here—I know Amy mentioned that she wanted to talk a little bit more about the context of the reform of our refugee system, given the security context now. I wonder if you could just expand on that.

Avvy, over to you.

**Ms. Avvy Yao-Yao Go:** Sure.

One of the problems is that the current definition focuses on the nuclear family, which means your spouse, children, and parents. It doesn't include, let's say, brothers and sisters, for instance.

Take me as an example. I came as a family member. I was sponsored by my eldest brother, because at the time I was under the age of 22. Of course, even the "dependant children" definition changed over time, so I came with my parents. I have three other brothers. Even though they are my brothers, they are not considered family because they are over the age of 22. Eventually, though, they all came. Some of them came as a result of the assisted relatives program, which was in place at the time.

For people who have some kind of family relationship, they were given points, under the point system, so that they could come to Canada with the extra points. Even that allowed some of the extended families to be able to come. But that scoring process has also been cancelled, so now brothers and sisters still have to come as independent immigrants, without the extra points. So even just looking at extending the family to include brothers and sisters would be a help.

I would also refer you to a study that was done by Professor James Hathaway years ago. I can't remember the exact name, but he talked about the de facto family or a family that is defined as a matter of fact. This is the family that has lived as a family. That concept is very helpful as well.

**Ms. Amy Casipullai:** I should say that I am actually a beneficiary of the assisted relative program. I was a refugee, but that's how I was able to come to Canada.

Moving on to the question, the CCR believes that we don't need refugee reform. Understandably, we have a number of concerns with how the Canadian system is being administered right now, but apart from a few important problems, notably the appeal, the system is excellent and it's highly regarded internationally, despite the criticisms that we have received from the UNHCR, for example. And that pertains to the hearing before a quasi-judicial tribunal, the single-member panel, and so on.

We first heard about refugee reform in September 2002. That was over two years ago. Since then, we've kept hearing about it both from the minister and from various policy analysts and bureaucrats, but there is nothing concrete that has come out. What is unfortunate, I think, is that it has been linked with the security concerns that have been raised since then. A more detailed account was actually mentioned by the minister in a May 11 speech. Virtually everything she mentioned is about reducing the rights of refugees to either prevent them from getting to Canada or to remove them as fast as possible.

When you actually look at the figures of the refugees the IRB deals with, they have dropped noticeably from about four or five years ago. With the implementation of the safe third country agreement, they're going to go down even more. We think it's really unfortunate that refugee reform is really being looked at in this context. The priority really should be to implement the refugee appeal division. We have a system. Let's make it work.

• (1000)

**Mr. Bill Siksay:** Do I have more time, Mr. Chair?

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

**Mr. Bill Siksay:** Okay, I'll use them up.

Sanjiv and others have raised the whole question of regularization. I'm just wondering if you could all say a little bit more about exactly how you see that working and if you could be a little more specific about what kind of proposal you think should come forward.

**Mr. Sanjiv Kumar:** Yes, there are two issues that are interrelated, especially the refugee appeal division as well as the regularization. Many times our honourable Minister of Citizenship and Immigration actually has said that money is one of the biggest problems for implementation of the refugee appeal division. We have a very simple solution: if you regularize the people without status, they'll come into the mainstream, a lot of tax money will come in, and all that money can be used for implementing the refugee appeal division. This is a simple submission, if I may.

The most important thing is that when we are going for a regularization program, this program should be inclusive, it should not exclude people. This is one of the most important things that was discussed at the status conference. Also, people believe it should not again create problems that see us accept one out of fifty. We should see that it should be inclusive.

Of course, we have concerns about criminality and other issues. The people who are a serious threat to Canada's security must not be allowed to stay here. We share the concern of all Canadians. But on very small grounds of mistakes that they have made, people should not be deported, they should not be removed. Yes, even shoplifting is

a bad thing, and we will not encourage it, but it is not a reason for deporting a person.

Thank you very much.

**Ms. Amy Casipullai:** Can I quickly add something to that?

One of the things the CCR looked at, because CIC and the Government of Canada have done this before, is the idea to look at people who are here and whose claims were denied for whatever reason, but who are from moratorium countries to which we don't deport people because of what could happen to them. There are many people in that category who are here, so maybe that's a place to start, to look at who is affected by this.

**The Chair:** Thank you. You're just on time there.

Mr. Anderson.

**Hon. David Anderson (Victoria, Lib.):** Thank you very much.

First, I'd like to thank the witnesses who have come today for the very important contributions that they've made to the committee.

My first involvement personally in the system was in 1984, as a member of the old Immigration Appeal Board, so I've had some knowledge of this over the past twenty years. The process, I think, perhaps works fairly well where the refugee status is clear. For example, with the Ismaili refugees referred to already this morning by a distinguished member of the Conservative Party, it was successful because the clarity was there. Even though some might have wanted to improve their economic status, they definitely were refugees and met the criteria.

It was similar with Hungarian refugees in 1956. It was similar with the Governor General coming here in the early 1940s; ironically, she was born in Hong Kong, and my sister was in exactly the same refugee category when she came to Canada at an early age during those war years.

So I think that where it's clear we have a refugee situation, Canada doesn't have much problem handling it, and that's continuing. What I worry about, though, is that while there's a lot of excellent comment on what you've given, it is a series of little details, it's just the top of the mountains here, the top of the mountains there—or, using a different metaphor, it's the trees but not the forest. The real problem is—and over these twenty years that I've been involved, I've seen it time after time—that the efforts have been made to deal with the trees. They've all failed. Of course, that's why you're back here. If we had succeeded in the past, you wouldn't be here.

The real issue is how to separate out the economic migrants who misuse the refugee systems that are set up, in order to try to come into Canada, thus creating this massive cost and delay and human suffering for the real refugees. That's my issue. I would therefore just ask you to reverse your thinking for a moment from the problems of the refugee as you've seen them, into how the people who are running the system can try to clear off those economic migrants more successfully.

It's no good burying the board, as one person said. Indeed, thank you very much for saying, Mr. Kumar, that it's not necessarily the appointment system of politicians, it's not necessarily the qualifications of lawyers. It really isn't that type of thing, although people get involved in that. It's really not the civil service, with due respect. It's really not the legislation. It's really not the lack of appeal. It really is something more fundamental, and that is that as soon as you set up such systems, they get flooded by people.

So I just will ask you to reverse your viewpoint and look at the telescope from the other end, and to comment on how we can deal with that.

• (1005)

**Mr. Sanjiv Kumar:** My response will be very simple. Rights confer to the people internationally. One of the major rights is the right to leave one's country and seek asylum. Everybody has that right.

There are legal procedures, and they should be fair and proper. That's the point. If people come to Canada, they should get the fair way to be treated. If somebody is not a real refugee, definitely he will be out of the process. But our system should be such that it doesn't look unfair. Everybody has the right to leave their country, so I look at the whole issue from that perspective.

**Ms. Avvy Yao-Yao Go:** Can I just make a quick comment?

It's naive to think the refugee system in Canada is not tainted by economic consideration. For instance, just take the Governor General as an example. She came in at a time when there was actually a bar to Chinese immigration to Canada. From 1923 to 1947, fewer than fifty Chinese were allowed to come. So it wasn't a time when we actually allowed Chinese refugees to come to Canada. She came because her father worked in the Canadian consulate in Hong Kong, as a refugee of course. But thousands of other Chinese refugees would not have been allowed to come. It was also at that time when we turned away Jewish refugees who were fleeing persecution from Germany.

So I think it's naive that we are actually, in our system itself, distinguishing refugee political issues from economic issues. This is always an issue that is in our minds. Certainly for economic migrants, the whole notion of separating political from economic is a difficult one. But even if we separate them, then we can look at some of the economic migrants and ask why they are not here. It's because our immigration system is an elite system. We don't recognize people who are semi-skilled, unskilled, while we are relying on their labour. They are coming here as migrant workers. They are coming here without status, sometimes working in construction, working in factories, and what have you. If there were a channel for them to come as immigrants, they wouldn't try to come as refugees.

**Mr. Nick Summers:** I'd like to question some of the assumptions that you start with. The fact is that most people who come to Canada to make refugee claims are not abusing the system. We may say at the end of the day that they don't qualify as refugees, but that doesn't mean they came to Canada saying, "Oh, we're going to take advantage of those soft people who have these silly rules". The fact is, most of them think they are persecuted.

It is not a simple thing to say, "Oh, well, you're coming because you're poor; therefore, you're not a refugee." Maybe they're poor

because people of their race or their tribe are being discriminated against in their country. Maybe they are coming because they're not allowed to get an education because of their political opinion, and that's why they're poor, etc.

The issues are not black and white. For the vast majority of people who come to Canada to make a refugee claim, they are coming seeking refuge. At the end of the day, after they've been through our process, we may say they don't meet our definition of a refugee. Unfortunately, we can't take every person from the world who needs assistance. We can't take everybody in, we only have a limited capacity. Therefore, we have a definition and they have to meet that. But we have a process for dealing with that. We have the Immigration and Refugee Board, which does a darn good job of sorting those people out.

There are problems with the IRB, with the appointment process and particularly with the appeal process, but we actually have a system that works. What we don't have—and this is the reason it takes so darn long before people are removed once they come to Canada—is everybody working together. We have the Immigration and Refugee Board doing their damndest with the resources they have, but they are constantly being starved for resources or appointments aren't made. We have CIC working against the Immigration and Refugee Board half the time. As has been identified in a number of reports, we have this culture of enforcement within the Department of Citizenship and Immigration. They see themselves as the gatekeepers. They see the Immigration and Refugee Board as the people who are trying to let everybody through the gate. There's infighting going on.

We have a very poor process, and a very under-resourced process for processing people once they have failed refugee claims.

• (1010)

**The Chair:** Mr. Summers, you're out of time.

**Mr. Nick Summers:** Well, maybe somebody will ask me to expand.

**The Chair:** We're going to go on to Ms. Guergis, for a five-minute round.

**Ms. Helena Guergis (Simcoe—Grey, CPC):** Good morning, and thanks very much for being here today. I appreciate it.

I've taken a read through a document I was handed. It's from the Canadian Council for Refugees, and it's called "More than a Nightmare". Given some of the stories I'm reading in here, it's very frustrating as you're reading through it. I couldn't possibly imagine what it would be like if I was separated from my family for that length of time.

There are so many different exams, like the medical exams, or different reports they're waiting for. One of the questions I had was why could these not be done simultaneously so that one wouldn't keep running out? I'm hoping someone can clarify that for me.

I'm also looking at the last page and your conclusion and your solution that, simply, "spouses and children of people recognized as refugees in Canada be brought immediately to Canada, to be processed here." How many people would we be talking about? Do we have an idea of the number of people we're talking about?

Having done some work provincially, I can recall the Ontario government several times saying it didn't have the resources given to it by the federal government to deal with the new Canadians already. I'm therefore curious about the number and whether you've somehow costed any of those extra costs on social services, just to give us an idea of what we would be dealing with.

**Mr. Nick Summers:** Unfortunately, I can't give you numbers. We haven't been able to get them pinned down. As a very rough estimate, we know approximately 10,000 to 15,000 people are recognized as refugees each year right now. The numbers are declining because the number of people coming to Canada is declining. But if you assume that maybe half of them have families that they want to be reunited with and that each family has an average of three people, you're looking at probably somewhere around 20,000 people a year.

I agree that it is a cost issue in many cases. Negotiations need to be done between the provinces and the federal government. Although the refugee system is, of course, a federal responsibility and a great deal of the money comes from the federal government, the provinces do have a role to play with regard to medical care, education, etc. The thing is, these are people who are going to be coming anyway. It's not like this is a new category of new people. The fact is that it is cheaper to bring them now than it would be to wait and bring them two or three years from now.

With regard to health, if you keep the families in refugee-like conditions or in a refugee camp, where there is not good medical treatment, where there is disease, etc., they are more likely to come here with chronic ailments that are going to need more medical intervention. In education, the longer you keep the children in a situation in which they're not getting education, the more like it is that, when they come to Canada, they are going to need special assistance to catch up to their peers. We see this already. The provinces are having to spend large amounts of money in special education and catch-up programs for these children.

And then there's a cost we can't even look at, and that's the intangible of how much more quickly that family can start to contribute to Canada, start paying taxes, if they are united and able to get on with their lives. It's a very difficult thing to cost.

You also asked about why we have these delays. They are partly due to resources overseas. Canada doesn't put enough money into its overseas visa posts. The posts simply don't have the people to process the applications, to do them simultaneously. The fact is that somebody says "Go do your medical", and then it's six months later before somebody gets another look at that file and says, "Oh, we need the security as well". That's one of the reasons we're saying to come into Canada to do it, because then we could deal with it here all at once.

The other issue is—and it was alluded to before—that the government sets this criterion of 60-40: 60% of our immigrants must be economic, and 40% are humanitarian. What often happens is that they hit the quota. They say, "We have our 40% already this year, so family reunification goes back to the bottom of the pile", and they move on to their economic immigrants. When they finally get back to it, they've reached a new fiscal year and they say, "Okay, we can

start processing them again". By then, medicals have expired, security has expired, and the cycle begins again.

• (1015)

**Ms. Amy Casipullai:** If I can add to that very quickly, I'm actually from Ontario. I also work at the Ontario Council of Agencies Serving Immigrants, and we're familiar with the question that you're raising regarding resources. Yes, resources are an issue, which I think is the case just about anywhere in Canada. But we need to also look at the long-term cost both at the provincial level and at the municipal level.

I don't presume to speak for the provinces or for any of the municipal governments, but this is an issue we've dealt with at the city budget level. The longer it takes for a family to reunify, then the higher the cost to the city or the municipality and to the province. In terms of sustaining the services they need just to get back on their feet and in order to start functioning as members of society, the cost is just enormous. It totally doesn't make sense. The sooner the families are together, the less dependency they will have to have on systems like the Canadian Centre for Victims of Torture, which ends up seeing a lot more people than it would have to if those immigrants had their families here to support them.

So I think the cost argument is a really iffy one. It really depends on which way you're going to look at it, but I think the long-term savings to Canada would be enormous if the families were processed here.

**The Chair:** Thank you very much. You timed it perfectly.

Mr. Temelkovski.

**Mr. Lui Temelkovski (Oak Ridges—Markham, Lib.):** I'd like to also thank the panel for coming in this morning.

A refugee situation is never an easy plight. It affects people for the rest of their lives in some situations. People lose lives by being refugees or stepping into the shoes of a refugee.

I'd like to ask the panel to give me some information on what they see as issues that can be implemented in respect of the safe third country agreement, how they see that policy, and if they see any room for improvement.

Second, you deal with refugees who initially come into your office and also come back when they have been refused and asked to leave. How are you helping to fulfil our Canadian way of living in assisting the refugees by returning some of them to their countries, knowing they haven't received a positive answer after having gone through the process?

**Mr. Nick Summers:** I'll deal with the safe third country agreement, and I'll let my colleagues deal with the other one. From the CCR's point of view, the best way to improve the safe third country agreement would be to get rid of it. We don't feel the United States is a safe third country. There are a number of concerns we have about the way in which the United States deals with refugee claimants. Far too many of them are kept in detention. The U.S. has a very poor record of dealing with cases involving gender and children. For instance, if you've been living in the country for more than one year, you can't make a refugee claim there. Many people don't have a refugee claim when they first arrive in a country. They come as students, they come as visitors, and while they're in the country, something happens back home such that they can't go back. These are people who need safe haven, which, as at least our laws and our precedents say, they would get here in Canada. Yet they're not going to be allowed to come to Canada because of this safe third country agreement. Our international obligations under the Convention for Refugees and a number of other things we've signed say that refugees have a right to seek safe haven where they wish, where they feel safe, not where we tell them they'll be safe. Again, we believe we're breaching our international obligations by stopping them from coming into Canada.

On a more practical level, we have some very real concerns about how this system is going to work. There are a number of exceptions to the safe third country agreement. For instance, if you come to the border with the United States and you say you want to make a refugee claim, and you have a brother or a sister who is a landed resident in Canada, you are supposed to be allowed to come into Canada to make a refugee claim. The problem is that there's no appeal process there. If the immigration officer you meet at the border says he doesn't believe you, go away, that's it. Even if you come back the next day with DNA evidence and pictures of the two of you together at your second birthday party, it's too late. The law says you get to make one refugee claim in your life with Canada, and the day before you had it. We have no way to correct that.

We are very concerned that people who know they are not going to be eligible under the exceptions of the safe third country agreement are not going to come to the border. They are going to turn themselves over to smugglers, they are going to try to swim across rivers, they are going to hide in trunks of cars coming across, and we are very much afraid that people are going to die. This happens at the Mexican border and borders all around the world.

Instead of people coming to Canada and presenting themselves in an orderly fashion at the border, having their pictures taken, their fingerprints taken, being told how to process themselves for a refugee claim, we're now forcing them underground, and we may never see them. We're going to build up this body of people within the country who have no status, and we don't even know they're there. We don't see how that addresses security concerns. It certainly doesn't address humanitarian concerns.

I'll stop there, because I know we only have limited time.

•(1020)

**The Chair:** There's no time for the second part.

**Mr. Nick Summers:** Sorry about that.

**The Chair:** Ms Faille is maybe going to give you a lifeline here.

**Ms. Meili Faille:** I don't know if I can give you a lifeline, but I would also like to ask you a question about the people who are in sanctuary right now. Let us know if the refugee appeals system would have given them a chance to bring new information or that mechanism would have solved some of the problems we're facing right now.

Continue with your lifeline. We have just a few minutes.

**Mr. Nick Summers:** I won't take very long on this, because I know some of the others wish to speak as well.

CCR does not take people into sanctuary, I want to make that clear. We're not a sanctuary group, but we are very sympathetic to the groups that put people into sanctuary, because we know from talking with them that one of the major considerations these church groups have is that they feel the people have not had fair process in Canada. Invariably, these are people who have had their refugee claims rejected on what common sense tells you are unfair grounds, and they haven't had due process.

From speaking with church groups, I know that if there had been a proper appeal process wherein these groups could feel that somebody had a fair hearing, there would not be the same drive to bring people into sanctuary, and I don't think we would have the problem we have. I'm not saying it would go away completely, I'm not naive, but I suspect we would have fewer cases and it would be a lot clearer.

**Mr. Sanjiv Kumar:** I would like to say that the best solution in the present circumstances, as well as the simplest and the most cost-effective, is a regularization of the people, then having an appeal division, improving the legal recourses, making the system fairer, so that after five or ten years we don't again come to the regularization of others.

•(1025)

**Ms. Avvy Yao-Yao Go:** I'll try to respond to the second part of your question. I'm trying to paraphrase the question as, if clients come to us who have been found not to be refugees, whether we'll assist them in returning to their country of origin. The clients who come to us tend to be people who are caught by the system for various reasons that have already been outlined, because there's no refugee appeal, because there's unfairness in the process, no due process, and so on.

I guess by self-selection, we are seeing clients who really shouldn't be returned to their country of origin. I think I'm doing the Canadian thing in trying to see if there are other ways they can stay in Canada. The process we have right now is only PRRA, which has a 3% success rate, or the humanitarian and compassionate application, which has about a 5% success rate. That's why we are here to talk about regularization and the appeal process.

**The Chair:** Next we go to Dr. Fry.

**Hon. Hedy Fry (Vancouver Centre, Lib.):** I want to thank everybody for coming. I'm very impressed with the people in the room, and I want to say Mr. Summers has actually put this whole thing into a perspective that I think is an important one. Obviously, you understand the system very well.

Some of the problems you have talked about obviously have to do with the fact that the IRB is working well, but there are the issues Mr. Anderson brought up: what is a refugee really, what is an economic migrant, what are the people seeking who come here just to better their lives? I think that, in effect, has summed up what the government and the minister are dealing with. We see the four systems, the immigration system, the refugee system, the visitor visa system, and the temporary worker system, to be in conflict with each other, creating problems and backlogs. We want to look at how we resolve some of the very real problems you talked about and whether we can find ways to deal with, as you said, the real need for us to have construction workers or people who are working in a system who don't come in under the whole labour market piece. How do we bring them in? How do we do that without having them come through a system that is not really the system they should come through. We need to look at how we reform the systems.

Of course, I'm prepared to listen to everybody else, but Mr. Summers, I want you to specifically answer. Given that there are still huge backlogs in inventory, even though they have come down recently, because the IRB has changed some of its working mechanisms, how do you see us finding a way to resolve some of the things that's practical? Sometimes, if you're suddenly bringing in a huge influx of people, provinces don't have the ability to deal with the social assistance and with some of the health requirements, so we can't just throw everybody into the system immediately. What are some of the practical ways you see us really dealing with this problem so as to accommodate some of the real issues you brought up here today?

**Mr. Nick Summers:** All in five minutes.

• (1030)

**Hon. Hedy Fry:** Under five minutes. There's a challenge to a lawyer.

**Mr. Nick Summers:** Let me break it down a little. There is a considerable difference between refugees who are brought in as sponsored refugees, either by government or by private individuals, and those who make their claims within Canada. Those who make their claims within Canada are self-selecting, and there's no way to plan far into the future, because you never know exactly how many you're going to get. The numbers have been declining considerably in the last few years; in the last three years they've basically been halved. We only have about 24,000 or 25,000 for this year, whereas we had some 50,000 three years ago.

As for practical solutions, I don't think you can speed up the Immigration Refugee Board process much more. It's actually working quite efficiently at the moment. There are some problems because so many people have made claims in Toronto and not elsewhere, and there needs to be some realignment of the resources, but generally, it's working well and cases are being heard within six, eight, nine months, which is better than in most countries in the world.

Afterwards there are some things we can do. We could put in the appeal process, because that will actually speed things up. Right now we waste a tremendous amount of time with Federal Court appeals, PRRA applications, H and C applications. We could do some H and Cs before they even go to the refugee system or in parallel with the refugee system. That's something that's been suggested to the CIC.

Many people would qualify under our humanitarian class who don't qualify as refugees, but the way our system is set up, we almost encourage them to make a refugee claim first. The PRRA system was never meant to be a long, drawn-out process. We need to put in the appeal, so we can reform PRRA to be what it was meant to be, a quick and dirty system. If people had an appeal process, they wouldn't necessarily need to spend a lot of time and effort in going to the federal court, which is extremely slow. The Federal Court, if they knew there was an appeal process, would be able to reject more applications for leave. Right now the court sees itself as the only outlet, so many cases that really don't fit are being accepted. To wear my hat as a person working with a legal aid commission in a province, we would approve fewer Federal Court appeals if there were a proper appeal to go to.

**The Chair:** Thank you.

Ms. Grewal.

**Mrs. Nina Grewal (Fleetwood—Port Kells, CPC):** Thank you, Mr. Chair.

I would like to thank the panel for taking the time to come here. Certainly your presentations were very helpful and useful to us.

I have a document in front of me, and there are some reasons cited for delays in the reunification of the refugees. Some 80% of cases take longer than 26 months, but medicals must be redone after one year regardless of other delays. Many refugees simply do not have the proof expected of them, and processing is delayed by ongoing requests for documentation. The fourth reason is that DNA testing costs borne by refugees are substantial. The fifth reason is unnecessary and confusing requests by CIC. The sixth one is that security checks take too long. Seventh is the inability to speak with the CIC person; the refugee person cannot speak English properly, so the delay is there.

Certainly there is a big impact on families. What can the government do to fast-track these cases?

**Mr. Sanjiv Kumar:** Well, a very simple way is to bring the people and process their files here. For a refugee person who is here, his file for landing or permanent residence is processed here. Why can't the file of the family be processed when the family is here? If there are problems, those can be checked out. That is the easiest and simplest way.

**Mr. Nick Summers:** Perhaps I might respond to that briefly as well.

As Sanjiv said, where it's a refugee already here in Canada, certainly the easiest and quickest solution would be to bring them here to Canada where they could be processed, because basically the vast majority of who we're talking about are children. We're not talking about security threats here; they are children and spouses of refugee claimants.

Any terrorist who wanted to come to Canada would find any number of quicker and more efficient ways to get to Canada than living in a refugee camp for a few years in the hopes that a relative will sponsor them to come to Canada. The fact is that these are people who are coming to Canada anyway. All we're doing is warehousing them overseas until we can pull together the resources to bring them.

If we bring them right away, obviously we're going to have a doubling up the first year we do it. There will be some costs there, because we're going to have the people who took two or three years to come and we're going to have the people coming right away. Thereafter, it's just going to be the people recognized coming each year. It's not going to be an increase in numbers overall.

There have been some concerns raised by others. I know at least one person at this table has raised this question with me in a previous meeting: What about them bringing disease? Well, we have visitors coming. Hundreds of thousands of people come to Canada every year. We don't make them stay overseas for a year while they get medical examinations. We have a very good public health system. If it is a major concern, we could have processing centres where people spend a day or two before they're actually allowed into the public.

As I said, security is not really a concern. Again, we have hundreds of thousands of people who come to Canada. We're able to do security checks here in Canada without making these people live in appalling conditions and forcing their family members here in Canada to live without their families and the uncertainty of that.

So there's a lot we can do.

•(1035)

**The Chair:** Thank you.

Mr. Silva.

**Mr. Mario Silva (Davenport, Lib.):** Thank you.

I think most of us can agree that we certainly have one of the finest systems in the world, both in terms of immigration and also refugees. That doesn't mean there are no improvements to be made to the system. I think it's certainly our role to make sure we have an even better system.

One thing that troubles me greatly—and I've heard this many times through the media—is that it all seems to vary from province to province and where one applies, and that who you get on the tribunal makes a difference to whether you in fact are an accepted refugee or not. That troubles me greatly, and I'm trying to figure this out. Knowing human nature and the limitations we can put on this system, how do you make it a better system, given the fact that, at the end of the day, we are still appointing individuals who are given *carte blanche* to make decisions?

**Mr. Nick Summers:** I hate to keep going back to it, but a very quick and simple answer to that is the refugee appeal system. One of the purposes of the refugee appeal division was to create precedents that would be binding on the lower level of the Immigration and Refugee Board. The refugee board—and I know because I've talked with the senior people at the board—are very concerned about this problem of inconsistency. They have tried issuing directives, they've tried a number of things, but the fact is that we're dealing with a large number of individual people whose mandate comes from the cabinet, not from a manager who employs them.

If we create an appeal division and make it clear that the decisions at that appeal board are binding with regard to similar-fact cases, we will get a much greater consistency across the country. We see that with our legal system. In criminal cases, family cases, etc., precedent helps to make the system fair. So there is a quick and easy answer.

**The Chair:** Thank you.

We'll go on to Mr. Siksay.

**Mr. Bill Siksay:** Thank you, Mr. Chair.

Mine is a question about how you see the new responsibilities of the Canada Border Services Agency affecting the refugee process now that they're going to take over the initial processing at the ports of entry. They did appear before us earlier in the week, and when I asked both the people from Citizenship and Immigration and the CBSA folks, they said they had seen no change in the way that's been handled.

There is the disparity now between people who make a claim inland and people who make the claim at the border. Different agencies are dealing with them. So I'm just wondering if you have any reflection on that issue.

**Mr. Nick Summers:** I hate to keep dominating this, but perhaps my colleagues can chip in.

We do have concerns. Right now, they're basically the same people wearing different hats, so it's not anticipated that there will be a big change in the way people are dealt with. The rules on what is required of somebody at the border have not changed, at least not yet. Really, all you're seeing is people wearing a different badge.

We are concerned that in future, as the two agencies grow apart in cultures, you will begin to see the border agency seeing its role as keeping people out, as opposed to an immigration officer who sees his job as perhaps helping people to come in. I mentioned earlier that there have been studies that say Immigration has a culture of enforcement. Well, how much worse is that going to be when the officers are actually in an agency whose job it is to be an enforcement agency? We have a concern that for the future, things will get tougher.

I might just point out that this has an impact because people can be diverted at the border. We've seen this already in some cases. People come to the border to make a refugee claim and they meet an officer who actively discourages them or outright misleads them as to what their rights are. The next thing they know, they're on their way back to the United States and we find out they're in detention. We're concerned that's going to happen more often in the future.

•(1040)

**Ms. Amy Casipullai:** Just to add to that very quickly, I think we also have to look at it in the context of the immediate implementation of the safe third country agreement on December 29, which will exacerbate the situation. We're talking about the U.S.–Canada land border, and it is CBSA that is going to look at the frontier processing.



As Nick has already pointed out, what we are seeing right now is that Canada is pretty much acting as if the agreement is already in place, because refugees are being directed back. They come to the border but they are not allowed to make a claim right away; they are given a date to come back. That means they have to have the resources to go back to the U.S., stay there, and then be able to come back. In some cases, I think, CCR members have found that they end up being detained in the U.S., and then it's impossible to track them. Even if they somehow manage to find legal assistance to help them through the process, once they get lost in that system, it becomes really difficult.

Coming back to the question of CBSA, our concern then is how is this information being provided to the people who come to the border? How does CBSA plan to address that? Up to now, in the meetings that we've had with them, that has really not been made clear in terms of what areas are going to be taken over by CBSA and CIC.

**Mr. Sanjiv Kumar:** As for CBSA, many immigration officers are concerned. We have faced them ourselves, and many of the people who are present in the audience have faced them. We are working on a book. The title of the book is *Brutal and Important*, and it will bring out many of the facts. Today's opportunity to make a presentation here has given us an idea, and it is opening up the channels where we will be in a position to provide more information to the members of the standing committee so that something can be done, because there are really serious issues that people are facing every day. Those people need to be listened to and their voices should reach here to members of Parliament.

**Mr. Bill Siksay:** The CCR had a press release on safe third country. You mentioned this morning that the United States is currently discussing legislation that would be more restrictive on asylum-seekers. Can you tell us anything more about what's under consideration there?

**Mr. Nick Summers:** You caught me a little off guard. I know I have it in my notes.

There are two versions of the Patriot Act: the Senate passed one, Congress passed one. I believe it's the one from Congress that includes a number of provisions that affect refugees. I'm trying desperately to remember exactly what those provisions are, and maybe some of my colleagues can help me.

Certainly, there's going to be more detention of refugee claimants. There is a restriction on the type of person who can make a claim. I can't off the top of my head remember what those conditions are, but there is a reduction in the types of people who can make a claim, and there is a reduction in the appeal process. Interestingly enough, we often criticize the American system, but they actually have an appeal process, where we don't.

**The Chair:** I'm sorry, time has run out.

Mr. Jaffer.

**Mr. Rahim Jaffer:** Thank you, Mr. Chair.

Mr. Summers, you may be fortunate. You get to follow up here on what you were just finishing.

I want to go back to something you mentioned in your case for the appeal process to be implemented. I think your feeling was that if

this appeal division was put in place, it would actually improve the speed of reviewing cases; they would actually be more expeditiously dealt with, because you wouldn't have cases going to the Federal Court. My concern—and I've got two to follow up—is that even if the appeal division is put in place and cases do go through that process, if they fail through that process, they would still potentially end up in the Federal Court and that could drag it out longer. I'd like to hear your opinion on that.

Also, along with putting the appeal division in place, it seems to me there is a huge concern about resources in the actual department in the processing as well. You make a good case for it, but wouldn't it still be the case that if you put the appeal division in place without addressing the question of resources, you're going to have challenges in the department anyway?

● (1045)

**Mr. Nick Summers:** First, as to the resources, the refugee appeal division would not be within the department, but within the Immigration Refugee Board—at least that's how it's set up in the legislation. But it still is a budget issue. The way it's been structured in the act is not a Cadillac system. It is a paper review on the merits. What is envisaged is that a division would be created with a number of senior former members of the refugee board, or perhaps some people selected directly to the appeal board, who would be centralized in Ottawa. We're not talking about travel costs, we're not talking about setting up new infrastructure in all parts of the country. They would be housed here in existing space in Ottawa. So basically, you're talking about the salaries and support staff for this board. It's a paper review: there aren't any hearings, there's no need for hearing rooms. It's certainly visualized that they could deal with cases in a relatively quick manner. So we're not talking about big delays or costs there. There are some budgetary concerns. We think they would be offset by the improvement in the processing of the refugee claimants, so that the failed ones would need to spend less time sitting here in Canada.

That comes to your second point about Federal Court. I agree, there's nothing at present that would stop people who still failed at the appeal division from going forward to Federal Court. There would be fewer of them, because we certainly believe a number of people would be accepted at the appeal division. Quite apart from that, as I say, right now agencies that assist refugee claimants are willing to put a lot of resources into appeals to Federal Court, because that's all people have. I believe, and at CCR we've talked about this, that there would be less willingness to pour those resources into Federal Court appeals, because there wouldn't be as much need. Federal Court appeals are not appeals, they're judicial reviews. The court can only look at errors of law. In a great many cases the issue is not one of law, but one of credibility or fact. Those shouldn't be going to Federal Court. It may be that the government would want, as part of the change in legislation, to enact a change regarding how you get to Federal Court, to set a higher threshold to meet in order to get to court.

The other issue is with PRRA. As I've mentioned before, that would be a huge saving in time. The department already has the power to severely restrict when you get the PRRA and how long it can take. Right now they're being very lenient, because that's all there is, but it could be a very quick thing just before somebody is removed.

**Mr. Rahim Jaffer:** Do you happen to have—I know you may not— an approximate percentage of cases that end up in Federal Court that succeed or fail?

**Mr. Sanjiv Kumar:** It is less than 5%.

**Mr. Rahim Jaffer:** Success rate?

**Mr. Sanjiv Kumar:** Yes.

Another important thing is that when we're talking about the appeal division, it's not a question of dragging, but a question of a fair trial. The person's case should be discussed on merit. That's the real issue, not dragging.

• (1050)

**Mr. Nick Summers:** There are two stages to a Federal Court review. You first have to get leave to go, and about 25% of cases that are brought to the Federal Court get leave for a hearing. Of them, 5% to 10% are successful. It is a very small number overall.

**Mr. Sanjiv Kumar:** As far as the issue of resources is concerned, there could be a system in which incentives are given to the people who are working very well, are integrated economically, and contribute to the economy if they are brought into the mainstream. Everybody's aware that there are thousands and thousands of people who are living illegally in the country, and they are not part of the economy the way they could be. They can surely contribute to the tax system and everything if they're part of the system. So we should find some incentive system.

The real issue is to let us regularize the people who are here, have been here for years and years, and will be here for many years, so that they are part of the economy, and then set our system so that we don't need amnesty or regularization or something like that in the future, so that our system improves—not only improves, but looks improved. Everybody has talked about the Palestinian case. There are thousands of such cases. There are two brothers, one is deported and one is accepted. That clearly shows that the system is not working and there are real problems.

**The Chair:** Thank you.

I'm going to give Helena 90 seconds from my time, because I'm going to take the next round. I cut her off a few seconds early, and I want to get her question in.

Go ahead, Helena.

**Ms. Helena Guergis:** Thank you, Mr. Chair. I will be quick.

It's further to the question I had earlier and the answers you gave me about long-term costs of making the refugees wait before they come to Canada. I'm asking you to give the committee more information, if you can, at a later date to support this. Obviously, I'm interested in your recommendation, but I need to know how many people we're talking about. I need to further understand what kinds of costs will be put onto the provinces, because there will be costs.

We just need to identify those before we can make any decision on this.

**Mr. Sanjiv Kumar:** I think the best data can be given by the CIC.

**The Chair:** Thank you.

I have just two quick points. One is about not having an appeal division. The Federal Court is more likely to hear an appeal, because it recognizes that there is the lack of an appeal in the process. Would that be your experience?

**Mr. Nick Summers:** Yes.

**The Chair:** It is important, because there has to be fairness. All members of Parliament, I'm sure, have dealt with cases where you really scratch your head. I had one case at the time of the two-person panels, but the person could elect to go with a one-member panel. I was parliamentary secretary. That was in 1999, I think, just when NATO was going to start bombing the former Yugoslavia. We had a young woman who was due to arrive back in Belgrade at 10 o'clock, with NATO starting to bomb at noon. What I found particularly troublesome, not just with that issue, was what the referee's decision was. He did not believe there was collaboration between the government, the media, and the police. We're talking about Milosevic, who is up on war crimes. This was the determination of the referee on the refugee board panel. I'm sure I'm not the only one who got a case like that, but it did happen.

Also, you are aware that the United States is moving towards some kind of regularization. One of the bases on which they are doing that is security, but they also recognize that if they were able to get rid of all the illegals, it would cost them big time in the economy. I'm sure you're following that.

**Ms. Avvy Yao-Yao Go:** I guess I have a comment about United States and I will try actually to go back to the question Dr. Fry talked about earlier.

The problem with the United States model, however, is that they are looking at giving the so called illegals temporary resident status for two years, treating them as migrant workers, I guess, as opposed to giving them permanent status. So it doesn't really solve the problem at the end of the day. We certainly hope that if Canada is going to implement a regularization process, it's not going to look at temporary resident status, as opposed to permanent resident status, which we're pushing for. Otherwise, you're just pushing the problem two years or three years down the road.

Ultimately, to answer Dr. Fry's questions on how to solve these problems, I think we have look not only at the refugee system but also at the family sponsorship system, and look at expanding family...because some of the non-status people who are here are here because their families are here, and then they are not recognized as families under our immigration act. We also have to look at the independent immigrants so that we are including people who are here working, but not as immigrants—the construction workers, the restaurant workers, the factory workers, who are providing services we need, but we are not giving them the status they deserve.

Ultimately, there's one thing we can perhaps borrow from the United States. I don't know the details of it, but they have a system whereby they assign a certain percentage of their immigration intake annually to people who somehow don't fit into any other categories. I think we can have that kind of a system as well, to catch people who.... You just have to wait, and if you wait long enough you get in, or something like that.

• (1055)

**The Chair:** The lottery system.

**Ms. Avvy Yao-Yao Go:** The lottery system, yes. So we can look at something like that as well and implement it, so that we know there is a channel whereby people can come here without having to try to fit into the other stuff they don't exactly fit into.

**The Chair:** Okay. We're going to wrap it up right now, because we have a notice of motion from Madame Faillie that we're going to deal with.

I want to thank you all very much, everybody who came, as well as all the audience. Thank you very much for attending.

We now have to take care of this business, Madame Faillie, in terms of your notice of motion.

**Ms. Meili Faillie:** Yes, I would like to read my motion and afterwards probably make a comment on it, because we don't have much time; there are only a few minutes left. I'll read it in both French and English.

[*Translation*]

Whereas:

The Refugee Appeal Division is included in the Immigration and Refugee Protection Act;

Parliament has passed the Immigration and Refugee Protection Act and can therefore expect that it be implemented; and

The House of Commons and parliamentarians have a right to expect that the Government of Canada will honour its commitments;

The Standing Committee on Citizenship and Immigration requests that the Minister of Citizenship and Immigration implement the Refugee Appeal Division without delay.

I am going to read it in English:

[*English*]

Whereas

The Refugee Appeal Division is included in the Immigration and Refugee Protection Act;

Parliament has passed the Immigration and Refugee Protection Act and can therefore expect that it be implemented; and

The House of Commons and parliamentarians have a right to expect that the Government of Canada will honour its commitments;

The Standing Committee on Citizenship and Immigration requests that the Minister of Citizenship and Immigration implement the Refugee Appeal Division without delay.

[*Translation*]

I have tabled this motion to illustrate the legal context. The Act has been passed. The relevant clause has been passed by Parliament and the Department made a commitment to implement it within a year.

Also, I was waiting to hear comments from our witnesses. I firmly believe that we should ask the government to establish the Refugee Appeal Division or to come and tell our Committee if it has other avenues, other solutions. Our Committee should in the least put a motion asking the government to meet its commitments.

Could we debate this motion at our next meeting?

[*English*]

**The Chair:** Okay, that would be fine. We could do that, if that's all right with the committee.

Good.

In that case, I just want to remind everybody about speaking to their House leaders regarding the travel, and again remind everybody that we were working on the other end of our mandate, and that's citizenship. I hope you will all check that out on the website. We also make a special note of asking for input on the citizenship oath, as well as on the preamble to the Citizenship Act. This will be the first time we actually go out to Canadians and would-be Canadians to put that forth.

Thank you very much.

The meeting is adjourned.





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