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Chair

Mr. David Tilson

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•(0845)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):
Good morning, everyone.

I call the meeting to order. This is the Standing Committee on Citizenship and Immigration, meeting 34, Tuesday, May 1, 2012. This meeting is televised.

The orders of the day are pursuant to the order of reference of Monday, April 23, 2012, Bill C-31, An Act to amend the Immigration and Refugee Protection Act and other acts.

On our first panel this morning for the first hour is Mr. Richard Kurland, a policy analyst and attorney.

Good morning. You have appeared before us many times. I see the word “attorney”. Does that mean you’re an American?

Mr. Richard Kurland (Policy Analyst and Attorney, As an Individual): I am, sir—

The Chair: Good for you.

Mr. Richard Kurland: —and a Canadian. The Québec Bar allows explicitly the use of the word “attorney”, and I’ve checked that since our last intervention, sir.

The Chair: Okay, because lawyers up here aren’t attorneys, at least that I know of.

We also have the Canadian Bar Association. Welcome to you. Tamra Thomson is the director of legislation and law reform. Good morning, Ms. Thomson. And we have Peter Edelman, who is a member of the national immigration law section.

You each have 10 minutes to make a presentation to the committee—Mr. Kurland, you know the drill—and then there will be questions.

We appreciate your coming again. You have up to 10 minutes, sir.

Mr. Richard Kurland: Thank you, Mr. Chairman.

In keeping with past tradition, I’ll keep my remarks brief and to the point, jealously guarding the chair’s time.

After canvassing individuals, associations, and colleagues from coast to coast, I have found that there’s a collision of passions. On the one hand, there is our natural inclination to provide our generous protection to the persecuted, the refugee. That’s in keeping with Canada’s fine traditions. On the other hand, the public desire for control and respect of Canadian sovereignty requires that we guard

against those who would abuse Canada’s generosity when it comes to protecting the refugee.

How do we reconcile these two passions? You will likely see throughout the day experts who will explain that we’re making a mistake on the refugee determination side in Bill C-31. I’d like to contribute by explaining very quickly how this came about and the struggle to reach the right balance.

First, what I tell people is to look at what is not in the proposed law. Canada had the opportunity to introduce the power to interdict would-be refugee claimants on the high seas. It cannot be ignored that that political choice was intentionally made not to interdict overseas in respect of our genuine desire to protect the persecuted. Other countries, western democratic countries, engage in this practice, but not Canada.

In terms of numbers, you’re looking at 35,000 refugees per year, and over a 10-year period you can guesstimate that there are at least a 250,000 to 350,000 claims.

The section of Bill C-31 attracting the most interest of my colleagues relates to mandatory detention, denial of family reunification for five years, and those sorts of things, connected to a mass arrival. I suggest that people should focus on solutions. It’s easy to identify prospective charter violations.

Where is the solution? What must be known is that political opinion, subsequent to the arrival of over 500 claimants in vessels created a severe downslide in Canadian support for our immigration programs in their entirety.

How many of these marine arrivals occur in a decade? In two decades, there have been three. That’s an average of about two every ten years, with the highest number being recently. So of 250,00 to 350,000 people, you’re talking of about 1,000 or 2,000 in 30 years. I can’t light my hair on fire when the numbers are that low. Of the poor people who did arrive and make a claim, as with other categories, an average of about 40% were accepted in our typical fashion, with others sliding in under other programs such as on humanitarian and compassionate grounds.

But regarding the principles at stake, including mandatory detention in Canada, I have not heard the War Measures Act invoked. But the public opinion that requires a solution engages a political communication strategy on the part of the Government of Canada to deter arrivals. Deterrence is the result of a law that may well indeed be charter-inappropriate. What remains to be seen is the effect. The gamble is the political embarrassment of having a law declared contrary to the supreme law of this country, the charter.

The practical outcome of this may well be the reduction, if not the elimination, of mass arrivals in marine fashion.

● (0850)

That's the political backdrop and strategy, and I would love to hear solutions from other witnesses rather attacks on the legalistic, technical position of it being pro or contra the charter. We need to work in this room together prospectively to find a solution whereby we can achieve both passions equally—to protect the persecuted and prevent the abuse of our Canadian generosity. That's the task.

Having said that, I move quickly—I will close in about a minute, if not two—to some things that may be tinkered with technically. The idea of a safe third country list is politically problematic, so I would recommend some consideration of a sunset clause on the list. Instead of being whacked twice politically for a decision to put something on, and then something off, put something on with a timer so that the country name drops off the list automatically without further ado after a period, such as 24 months. That saves you a lot of embarrassment down the road. It's practical; it's doable.

I'll walk quickly though the other aspect, and then I'll pass the torch. Two illustrations should be borne in mind when looking at Bill C-31. The *St. Louis* mass arrival by boat: How would you treat those Jews? Would it be mandatory detention for a year? They did it back then. An oven or a detention in Canada? It's an easy choice. Then there's the Tiananmen Square massacre and the students who arrived in this country. Before June 1989, no one believed there was a problem in China. Now what? So build those safeguards so you can proactively have a little safety valve, a little delay, for the pre-Tiananmen sequence of events. I think that's important.

That's going to be my time for now. Thank you, Mr. Chairman.

The Chair: Thank you, sir. I always enjoy your presentations. It's worth the price of the admission.

Thank you very much.

Mr. Richard Kurland: Thank you, sir.

The Chair: Okay. Ms. Thomson, then Mr. Edelmann. I understand you are both speaking. The two of you have up to 10 minutes.

● (0855)

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair, and honourable members.

The Canadian Bar Association is pleased to appear before this committee today on this important piece of legislation. The Canadian Bar Association is a voluntary association of 37,000 lawyers across Canada whose primary objectives include improvement of the law and improvement of the administration of justice. It's with that optic that the members of our immigration law section have analyzed Bill

C-31 and make the comments that we have submitted to you in writing and will speak about today.

I'm pleased that Mr. Edelmann is here with me today. He is a member of the refugee bar and of the immigration law section, and I will give to him the bulk of the time.

Mr. Peter Edelmann (Member, National Immigration Law Section, Canadian Bar Association): Thank you for the opportunity to address the committee today.

We members of the CBA section spent the last several weeks studying this bill in as much detail as time allowed. As you are aware, it's a very complex piece of legislation, with major impacts on immigration and refugee law.

We have some detailed written submissions that set out a number of concerns we have with the bill. I'm going to focus on two issues that encompass a number of points within the bill today. The first is the scope of the legislation itself, and the second is the expansion of powers being delegated by Parliament to the minister.

The CBA section is particularly concerned with the omnibus nature of the bill. In particular, with respect to the stated objective to pass this legislation on a very short timeline—before June 29—given the scope of the changes, there is a very short amount of time available, and even in that short amount of time, we've identified a number of different problems with the bill.

The scope of the changes is massive, and understanding these reforms is further complicated by the layering of multiple sections—previous acts that have yet to come into force, parts of IRPA that haven't come into force.

On top of that we have the changes that were made by the Balanced Refugee Reform Act, Bill C-11. Layered on top of that, we have changes in Bill C-31 that make changes to the sections of IRPA that were not in force and changes to the Balanced Refugee Reform Act, and other, further changes.

Just trying to understand all of that and cross-referencing the amendments is quite a task in and of itself. The Library of Parliament, which has done an admirable job in trying to summarize the legislation, indicates that the creation of RAD, for example, would take place immediately upon royal assent. I should hope that is incorrect, as the Immigration and Refugee Board is not in a position to implement RAD upon royal assent. The error made by the Library of Parliament is understandable given the multiple coming-into-force clauses within the bill.

So we have nested clauses within the bill that even the Library of Parliament is having challenges to understand. The minister himself has demonstrated a lack of understanding of fundamental aspects of this legislation.

Clauses 18 and 19 of the bill would unequivocally change the law to make cessation a basis of inadmissibility and loss of permanent resident status. As a lawyer who regularly works with the Latin American community, I can tell you that this change has potentially devastating consequences for thousands if not tens of thousands of permanent residents.

I'll give you the example of a Chilean refugee who fled the Pinochet regime in the 1980s, who has been a permanent resident and contributing member of Canadian society since that time. The new cessation provisions would mean that person could, at any time, be taken before the board for cessation proceedings, and there would be no defence. The changes in Chile are clear; the Pinochet regime fell many years ago.

Such refugees would not only lose their permanent protected person status, but they would lose their permanent resident status; they would have no appeal, there would be no consideration of humanitarian factors, and they would then be removed as soon as possible.

Aside from the nature of the provision itself, what's of particular concern to the CBA is the fact that the minister appears not to understand the nature of the change. In fact, he has repeatedly and adamantly claimed there is no change in the cessation provisions before the House and in the public sphere. I'll just read from the *Montreal Gazette*, March 8, 2012, a letter written by Minister Kenney. He says:

Your editorial wrongly claims that Bill C-31...includes a new power that allows the minister of citizenship and immigration to revoke permanent-resident status from refugees in Canada.

He goes on to say:

Bill C-31 only modifies the current law by changing the current redundant process for revoking fraudulently obtained refugee status and permanent residency in two separate steps, to a one-step process at the independent IRB that revokes both simultaneously. It is an administrative change, and not a new authority.

This is clearly incorrect.

There is a consensus among lawyers. The consensus between the CBA, the Canadian Association of Refugee Lawyers, a number of other people who have studied this bill, the Library of Parliament, and the department itself make it clear that this interpretation is incorrect.

The minister himself appeared before this committee, and appeared to admit that was not what was intended and that he was open to an amendment. We hope that amendment would in fact be made. I do hope that will be followed through by this committee.

• (0900)

What is of particular concern is the speed with which this complex legislation is being passed without the time to properly study it. You're being asked to pass a bill on a very short timeline and we don't know how many more unintentional consequences there will be—and there are—in this bill.

With all due respect, no one whom I'm aware of has been able to study this bill in depth. That includes me and Mr. Kurland. And I'm not pointing at Mr. Kurland or the people who are appearing before this committee, but in terms of all of the unintentional consequences, we simply haven't had time to study in depth this piece of legislation.

The problem is compounded by the lack of details. When IRPA was passed in 2002 there were concerns raised that there was a shift to legislating by way of regulation. The trend continues with this bill. For a lot of the parts of this legislation, we've not seen the regulations that are going to fill in the details. We have biometric provisions that simply say that the government is going to set this out in regulations. It's very difficult for us to comment about that. As to whether or not biometrics is a good idea or not, there are no details in this bill. Then there are the removals as soon as possible and the timelines.

In other respects, the details are not even by way of regulation, but by way of ministerial order. For example, with respect to the designated countries of origin, they will not only be designated by ministerial order, but the very criteria by which they will be designated will also be decided by the minister. There is nothing in the act that would prevent the minister from setting the levels at 100% so that any country could be designated at will.

One of the more striking examples of the expansion of powers is with respect to investigative detention, which significantly widens the CBSA's powers. Currently, paragraph 58.(1)(c), which was introduced in 2002 shortly after the terrorist events of September 11, allows for the detention of permanent residents and foreign nationals at ports of entry on suspicion of a security threat and violation of human or international rights. The government justified this at the time as anti-terrorist legislation. Inadmissibility for security and these types of rights violations is quite rare.

The bill proposes to greatly expand these powers to include detention for mere suspicion of almost any form of criminality, even minor criminality in the distant past, whether or not a person has ever been arrested or charged. For example, a 20-year-old permanent resident suspected of using fake identification to get into a bar while visiting the U.S. would be subject to detention with little or no recourse while the minister investigated the suspicion of inadmissibility based on what could be the offence of uttering a forged document. It carries a maximum penalty of 10 years or more and is therefore considered serious criminality under the act. This same permanent resident could arguably be detained on the same basis 20 years later.

The bill would grant exceptionally broad powers of detention to officers, with little or no direction with respect to their application. That is the breadth of what we're talking about.

I present this as an example because it's of particular concern that Parliament is delegating its power, whether it's to the minister or to officers, when it's not properly circumscribed. That type of delegation does not contribute to law and order. It in fact undermines the rule of law upon which this institution is based. I hope that as parliamentarians you take pause with respect to the delegation of these types of powers with little direction.

• (0905)

The Chair: Perhaps you could wind up.

[*Translation*]

Mr. Peter Edlmann: Okay.

As I said in the beginning, we have done our best to conduct a detailed study in the time frame allotted to us. I would be happy to answer questions on any of the issues raised in our written submissions.

Thank you.

[*English*]

The Chair: Thank you. Mr. Menegakis has some questions.

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

I'm going to start my questions with Mr. Richard Kurland. Mr. Kurland, welcome.

Welcome, Mr. Edlmann, and Ms. Thomson. Thank you for appearing before us today.

Mr. Kurland, some witnesses have referred to our current system as a path to bankruptcy—in fact, one said with extra allowance for a special diet. In what ways would you agree or disagree with that comment?

Mr. Richard Kurland: Well, it isn't a path to bankruptcy because the input on the intake is finite, so there's not going to be an uncontrolled bleed of money.

In addition, this bill actually tightens up the process, monitors, and controls on the financial side. In addition, on our refugee board, what I've seen in the technical design, on the layout, the framework of the new refugee determination system is an increase in efficiency. Processing times are to be dramatically and significantly cut, thereby reducing the total inventory of refugee claimants during the refugee determination process, because you're going to be doing more cases faster with fewer resources.

Our central Canadian provinces and B.C. will have, as a result, lower carrying costs of the refugee inventory because you're going to see less demand on public assistance. The work permit controls will effectively create taxpayers for some of these refugee claimants when the positive determination signal is struck. Finally, overall, you may see a change in the composition of the intake. I do not expect the same source countries to be in place post-arrival of Bill C-31.

Mr. Costas Menegakis: That leads to my second question. I was going to ask you if you support Bill C-31 and why. Do you want to comment on that?

Mr. Richard Kurland: Well, thank you for that tough one.

Look, I've yet to see a perfect law come out of Parliament. What we are seeing here today, as I say, is a collision of passions. It is impossible to derive a perfect law because of the balancing, the compromises that make legislation possible. After I see the review of this legislation by our Canadian judicial institutions, we will know the answer. Today, no, it's not perfect.

I have concerns about mandatory detention. I have concerns about increased powers to law enforcement that can put human beings away for prolonged periods on their say-so without appropriate judicial oversight. I have those concerns.

I agree that cessation puts in a state of emotional vulnerability tens of thousands of people who thought they were safe in Canada, and are safe no longer. But there are solutions. On cessation, it's called the User Fees Act.

If you are requiring post-positive refugee claimants to become Canadian citizens, on the one hand, on the other hand, you impose on Immigration Canada the duty and responsibility to conclude processing on a permanent residence application in 12 months or less. If country conditions are changing 24 months later, 36 months later, that's enough time for people to become citizens. Then, I don't have an issue with cessation. But presently there is no control over the duration of processing of a permanent resident or citizenship application in this country, and that needs to be fixed.

Mr. Costas Menegakis: A lot of the refugee claimants come from the European Union. I'd like to ask you if you think it's fair for taxpayers to foot the bill for people from the EU who abandon and withdraw their claims? I ask because that's what is happening.

Mr. Richard Kurland: When the convention was drafted... You're looking at a law that's about half a century old, a protocol or understanding or international agreement to provide sanctuary. It's country-locked. So, yes, in law you can make a case that you're being persecuted, not discriminated against in a country—

• (0910)

Mr. Costas Menegakis: But we're footing the bill.

Mr. Richard Kurland: —and we're footing the bill. Also, in law today, in the European Union, a claimant from a European country can buy a train ticket, walk, or fly to an adjacent country and legally live and work there. Why do they need to immigrate to Canada using the refugee ticket when they can have sanctuary down the street legally? It's just not calling it sanctuary. They're allowed to live and work there freely, so it is a tax bleed on that point. We have to fix that and I think this proposed law addresses it.

Mr. Costas Menegakis: What are your thoughts on biometrics? How do you think it will help protect the integrity of our immigration system and the security and safety of Canadians?

Mr. Richard Kurland: As my colleague addressed it, it seems a little thin on detail, but generally in Canada as yet, we have no official exit control system in place. We carefully scrutinize the ins and outs with our partners internationally.

I don't want to reach the stage where everyone has to carry a national ID card. If there's biometrics, what's missing, and what we might give some thought to, is an effective consumer protection control. If the government is willing to collect biometrics, which is deeply personal, the public has a right to know what is in possession of government regarding them and their family. So that's a fix to be made.

Mr. Costas Menegakis: Do you think that biometrics should be collected only for temporary resident visas or for anyone entering Canada?

Mr. Richard Kurland: Frankly, I'm leery of biometrics. I'm uncomfortable that the technology today allows a government, foreign or domestic, to identify and locate the holder of certain documents containing chips. I'm leery of the facial biometric recognition software in our ports of entry. Canadians do not know the extent of biometric information collected; they do not know the extent of biometric information stored and shared, not just between federal and provincial governments but also with governments internationally.

The Chair: Thank you, Mr. Kurland.

Please go ahead, Ms. Sims.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Thank you very much.

Thank you to the three of you for taking the time to come and meet with us today.

My question is specifically for Peter at first.

I think there have been a lot of conversations about the haste with which this legislation is being pushed through. I don't think anybody is saying that it's being done in a way that gives us all the time needed to look at it in detail. I'm also concerned about the centralization of more and more of power in the hands of one person, one minister. I'm not just talking about the current minister, because once a law goes into place, we're talking about future ministers as well. I'm concerned that lawmakers have had very little say, because so much of it is going to be done through ministerial orders; and in many ways we're being asked to discuss a bill for which there is very little clarity, because so much of it is going to be in regulations.

I would say that the one area that has already created a lot of emotional energy is section 19, that is, the revoking of the permanent residency. It's very, very clear that the minister himself was not aware of it. At least when he came here, he said that he was open to amendments, which makes me think, if that was not his intention, then why wasn't it changed before it arrived at this committee or before it ended up in the House? Now for him to say that he is open to amendments still makes me a little leery.

For a lot of Canadians out there, or residents in Canada, they are experiencing a lot of anxiety. You and a wide array of others have identified this concern. By the way, we heard this concern expressed a number of times yesterday.

Can you explain how you arrived at this interpretation, and why it poses a concern?

Mr. Peter Edelmann: The interpretation is pretty clear on the face of the bill. I don't think it takes a subtle interpretation of the bill to look clause 19 and see that it changes section 46. There's no ambiguity about it. It is a change.

In the minister's discussions about this, there seems to be a confusion between vacation and cessation. They are two different processes. Vacation is a process by which protected person status can be taken away by way of vacation, when somebody has originally obtained their protected person status by way of misrepresentation or withholding material facts.

Currently under the act the consequences of that are loss of permanent residence as well as loss of protected person status. So that already exists in the act.

Cessation is a separate process. Cessation is a process by which protected person status can be lost if the situation in the home country or the country of origin has changed and in certain other circumstances that are related to that. That exists in the current act as well, and so protected person status can be lost in those circumstances.

What is changing is that right now in the act that does not lead to the loss of permanent residence. So one loses protected person status, but not permanent residence.

When the minister has discussed this, as he has in *The Montreal Gazette* piece, for example, he uses the term "revocation" to talk about both of them at the same time. Revocation is not a term that is used in the act in this context. So it's a term that's being used to meld these two concepts together and talk about them at the same time when in fact they're two separate concepts.

As for vacation and the example that's used by the minister—and by Ms. James, I believe—of a person who goes back after a couple of months, if that is evidence of the person originally being misleading or engaging in misrepresentation when they made their refugee claim, that would be a basis and new evidence at a vacation proceeding.

● (0915)

Ms. Jinny Jogindera Sims: Thank you very much.

It causes me concern that a minister who is so hands-on with everything he does with the immigration file has maybe missed this. Now he's open to amendments, but we will see about that.

How do the provisions in Bill C-31 dealing with detention of designated foreign nationals differ from the provisions that already exist in the current law? This is another area of concern. Canada does not have a history of just throwing people who come here as asylum seekers en masse into prison indefinitely, or at least for up to a year. So what are these differences and what is significant about the differences?

Mr. Peter Edelmann: The differences are night and day. The normal detention provision under the act is that there is a detention review after 48 hours, then after seven days, then every 30 days thereafter.

In the most exceptional detention regime that we have, which is dealing with security certificates, there's a detention review at the beginning and then a review at least every six months thereafter. This is even harsher than the security certificate regime, which the Supreme Court of Canada commented on in the Charkaoui case. I don't even understand how one would present an argument that this is constitutional.

If I were arguing for the Department of Justice, I would be in a very difficult position arguing for the constitutionality of these provisions where there's a one-year detention with no review. It may be that the recourse is going to be by way of habeas corpus in the provincial courts, as the federal legislation will just have fallen. But there will be no mechanism for review, and the law with respect to detention will have to be dealt with in some way and that may be through way of habeas corpus. I don't know if that's the intention of the legislator or not, that the provincial courts deal with the detention issue, but that seems to be the only recourse that will be left.

The Chair: Thank you.

Mr. Lamoureux.

Ms. Jinny Jogindera Sims: I've run out of time already.

The Chair: That's what happens when you're having fun.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): You never know if the minister might be thinking of the notwithstanding clause, quite possibly, to deal with it. I say that somewhat tongue-in-cheek knowing full well that it would never happen—at least I'd like to think so.

My question, and I have a couple of questions in a very limited amount of time, is in regard to the mandatory detention. What became very clear yesterday when we had the Canada Border Services Agency here is that the current system seems to work quite adequately.

Mr. Kurland, you had made reference to the fact that in the last x number of years—I think you said 10 years—we've had a couple of boats and that it's very rare. Yet the government has decided to take the draconian action to have mandatory detention. Do you in any way support that aspect of the legislation, or would you suggest that at the very least that should be amended out?

• (0920)

Mr. Richard Kurland: I left in the term “attorney” knowing that the Chair would raise the point, and in connection with this answer, that's why I put it in.

Coincidentally, out of the last, say, five marine arrivals, at least three arrived within three weeks of a new immigration minister picking up the baton and assuming those responsibilities. You can't get a baseball across the Pacific Ocean without the Americans knowing. To just spitball here, what if an analyst in Washington came up with the idea that we allow the Canadian taxpayer to pay for our northern border by allowing a marine arrival, knowing full well the political consequences for an inexperienced immigration minister. Regarding the chances of more marine arrivals, just watch when you appoint people to the position of minister.

Yes, I am opposed to mandatory detention for a mass arrival, but I suspect those are going to be few and far between. I have no other answer.

Mr. Kevin Lamoureux: Mr. Edelmann, one of the things that has become fairly clear from the minister and a number of the Conservative MPs who actually spoke to the legislation is that you might have a vested interest because you're a lawyer and you deal with refugees.

I'm wondering if you could comment as to why it is you're providing advice to this committee. Does it have anything to do with your current income or future income?

Mr. Peter Edelmann: I can say that my own practice is criminal and immigration law. I can say that refugee law by far is not the most lucrative part of my practice. I don't know any refugee lawyers who are making significant amounts of money practising refugee law. I came here for two days to address a number of concerns I have about the bill.

Investigative detention will be very lucrative for my practice. Permanent residents who are put away on mere suspicion are going to call me. They're going to hire me. So, from my personal financial interest, this legislation cannot be draconian enough.

The reason I'm here is that I have a concern with respect to the integrity of the system as a whole. I have a concern about the effect on the human beings who are going to be impacted by this. I'm here on behalf of my clients and my future clients, as well as other Canadians and permanent residents whose lives are going to be significantly changed and impacted by this legislation.

In terms of my financial and personal interests, please go ahead; I don't see any problem. The more poorly written the legislation is, the more there is for us to live on.

Mr. Kevin Lamoureux: The more business for you.

Mr. Peter Edelmann: In fact, it's quite helpful for us.

Mr. Kevin Lamoureux: The clauses that concern you most in terms of their need of amendment, would they be clauses 23 and 26? If you could amend one specific clause, which one would it be? But stay away from the detention area because we know how flawed that is.

Mr. Peter Edelmann: It's very difficult. We have suggestions on a number of different clauses.

The investigative detention provisions are of some concern. There are a number of concerns within the refugee context. The cessation provisions would be high up there. The denial of humanitarian and compassionate access is of definite concern. The entire designated foreign national regime, I would say, is in need of significant changes, if it's useful at all. The designated countries of origin is the other major change, not the idea of designating countries of origin but the mechanism by which it's going to be done and the criteria.

The Chair: Thank you.

Mr. Opitz.

Mr. Ted Opitz (Etobicoke Centre, CPC): Mr. Kurland, the majority of asylum claims are done inland. What do you think can be done to encourage more people to apply from overseas?

• (0925)

Mr. Richard Kurland: Nothing. We have an ample supply of overseas refugee claimants who deserve to be in Canada but cannot come to Canada because there are limits to our generosity.

We do our fair share. We're a gold medal refugee determination system country. We should take more. We may take more in future, but that's the appropriate discussion. If we want to take more, explain how. It's a priority issue.

Mr. Ted Opitz: In that case, what do you think the government can do to prevent the refugee system from becoming a parallel immigration system, as opposed to providing asylum for those who need it most?

Mr. Richard Kurland: Well, missing in the analysis of Bill C-31, and probably because of the shortage of time as pointed out in testimony, is what Canada does do alongside Bill C-31. The budget provides resources, more resources in an era of restraint, for intelligence gathering and sharing overseas to help stem the sources or drivers that produce refugee claimants to this country.

After the marine arrival, Canada, without public credit for doing so, allocated intelligence resources to the neighbouring countries of Sri Lanka, using its diplomatic resources to stem the flow and correct the situation on the ground. In Europe, Canada is a contributor to the Roma situation there, in terms of finding solutions proactively. Alongside our silo of refugee determination, our silo of immigration processing, we are holistically allocating resources on the diplomatic, intelligence, and law enforcement front to augment our partnerships abroad to address precisely your question.

Mr. Ted Opitz: Yesterday, Martin Collacott said that drug dealers are turning to human smuggling now because the penalties are less. Do you agree with the statement, and do you think the measures in Bill C-31 go far enough?

Mr. Richard Kurland: With my good friend, Mr. Collacott, for over 20 years, I have been hard-pressed to disagree with him publicly on any matter. However, he may not be wrong, as he has access to information far superior to my low level means. If he is indicating that the criminal element internationally or drug dealing establishment now prefers refugee or human smuggling for its lower costs, he has the facts and I don't.

Nevertheless, that's not what I would be measuring. You can't measure potential supply; you have to measure the hard facts on the ground, the intake to our Canadian overseas determination system, the intake to our Canadian inland system. Has there been a spike there? No.

Mr. Ted Opitz: There are issues of criminals, traffickers, smugglers coming into Canada. I would submit to you, sir, that these people use mass events as a way of hiding within a crowd. That has a certain impact on public safety. I know what the impacts are. Particularly, people who are trafficked and smuggled in here under false pretenses, they would expect one thing and the next thing they know they're going somewhere else.

You talked about biometrics. I'm going to suggest to you that biometrics is in fact helpful in this case, not only for that reason but also because criminals have come into this country multiple times; been deported multiple times; re-entered multiple times; re-offended multiple times, sometimes seriously, thereby having a huge impact on public safety. So when a mass arrival comes in, whether it's by airplane or ship or other forms, even onesies or twosies, that detention is sometimes required.

If you don't know who these individuals are and they're not cooperative at times in revealing their own identity, why would you release them into the Canadian public until you are absolutely sure?

Mr. Richard Kurland: I'll tell you something—

Mr. Ted Opitz: What are you going to say to the Canadian public if somebody gets injured as a result?

Mr. Richard Kurland: I would say—and you can call on resources for this one—that within three days of arrival, the potential threats among the passengers on that boat would have been identified. Since 9/11 billions have been poured internationally into the intelligence framework. Ours are friends.

If you travel internationally now, if you arrive in Canada now, the biometric collection and identification process is so strong that you may be identified within seconds literally. I don't buy for a moment.... Go and get the expert testimony. When I was walking through a port of entry into the People's Republic of China, they showed me the biometric software recognition with faces flipping on screen until mine was there when I stepped up. We have that technology.

The risk to the Canadian public of a person release from detention is a question of case-by-case analysis in front of our judicial process. The cost benefit analysis has one conclusion only: You either accept 12-hour lineups at our ports of entry or you don't. You either accept two-day delays in the delivery of goods.... Gone is just-in-time inventory, shattering our economy. Yes, you're going to take a hit occasionally and adverse publicity. That's the cost. The benefit is our free flow of goods and services internationally, and that's well worth that cost.

• (0930)

Mr. Ted Opitz: In this case I would disagree with you to some extent, in that the technology exists. Do we have it properly implemented yet? No. Is it capable of determining who somebody is in three days? I don't think so. Not yet. If we can try to get to that standard it would be a noble goal because it would improve the situation immensely, but we have to deal with the situation and the circumstances that we have right now.

Would you agree, sir, in the interests of public safety and making sure that the Canadian public is not affected that detention is a valid means of determining who somebody is before they're released into the Canadian public where they could potentially do harm? I ask because it's not just the criminals who work within their own circles, but it could also be a terrorist. It doesn't have to be a lot of terrorists; it just has to be one guy who is motivated to do something. That's all that has to get through.

Mr. Richard Kurland: With all due respect I must say no.

More factors have to be taken into account. Assessing the individual circumstance of each case, as we have now, is a system that works and is a model internationally. Can it be tightened? Yes, by adding more resources to that adjudication process, but that's not our priority. The system does work.

The Chair: Thank you.

Madame Groguhé.

[*Translation*]

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

I want to thank the witnesses for joining us this morning.

My question is for Mr. Edelmann.

You think that creating a refugee category based on the mode of arrival would be problematic. How could that be an issue?

Mr. Peter Edelmann: Regarding the designation of foreigners based on their mode of arrival, I think I can talk about the current system and the proposed system. The designation we are talking about goes well beyond the mode of arrival. Any group—even a family arriving by plane or by car—could be designated by the minister.

The problem with this bill is that the consequences are punitive. That is the main issue with the system proposed in this bill. All the measures that have to do with this designation—be it detention, denial of permanent residence or denial of travel documents—are punitive. I could not really comment on an issue as broad as the relevance of designating various groups for the reasons provided. However, I can say that, when it comes to the bill, the designation's intent and technicalities are problematic.

Mrs. Sadia Groguhé: Okay.

More time is needed to obtain additional details, study the bill thoroughly, take into consideration the conditions and applications in order to determine the potential consequences.

Bill C-31 prohibits family reunification in illegal arrival cases. What do you think about that? Does it comply with the charter?

Mr. Peter Edelmann: I think that Professor Dauvergne, who will testify before you, will be able to tell you about the Australian experience. My understanding is that people bring their wife, their children and other vulnerable members of their family on the boat or other potentially dangerous means of transportation, as they don't want to be separated from them for years on end. If family reunification is prohibited after boats arrive, the consequences of that separation, psychologically speaking, can be very significant. Actually, the Supreme Court has already stated that separating people from their children is a constitutional issue. Only time will tell how this issue will be addressed and whether that will be done as part of those designations, but at first sight, it is problematic.

• (0935)

Mrs. Sadia Groguhé: Very well.

Past witnesses have talked about the child's best interest. Some witnesses have claimed that Bill C-31 fails to take that interest into consideration.

You find that a year of detention as punishment for irregular arrivals is unreasonable. Why?

Mr. Peter Edelmann: The problem actually has to do with this bill's lack of criteria and its punitive aspect. The only criterion is the mode of arrival. People should not be detained on the basis of such a criterion. There is no link or logical connection between the detention and the reasons behind it.

In other provisions on detention, we see that, if a person is detained for trying to escape and that person poses a danger to the public or is suspected of having ties to a terrorist group, the case has to do with national security and the protection of the public. If the system had that kind of criteria, and an independent entity decided that the person in question posed a danger and should be detained, things would be different. However, if a year of detention is imposed based simply on the way the person arrived, there is no connection between the detention and the criteria. The only aspect involved is punitive.

[*English*]

The Chair: Thank you.

Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you very much, Mr. Chair, and welcome here today to our three witnesses.

I keep hearing the words “detention” and “prisons”. It's misleading to mention prisons when we talk about detaining someone who comes here to Canada in an irregular mass arrival.

I sometimes wonder if the opposition would like to provide a five-star hotel, with a chocolate on the pillow every morning. I don't think any Canadian believes that's necessary to accommodate people who come here through the back door. These arrivals are not going through the proper channels and applying for refugee status, and so forth, to come to Canada.

Although it's not a five-star hotel, I'm sure these facilities provide adequate accommodation for the people who come to Canada by irregular methods. I don't think anyone in this room actually believes that people who come in mass arrivals come with all of their proper documentation and can be processed overnight.

Mr. Kurland, do you believe that's the case? Do you believe that people who come in mass arrivals, hundreds at a time, on a boat, have proper identification and that we can identify them overnight?

Mr. Richard Kurland: Traditionally people in fear of persecution will not arrive with appropriate documentation. That's just the normal course of the refugee determination processes globally. Yet somehow, over the decades, that gets sorted out.

Ms. Roxanne James: Thank you.

I've heard from other witnesses that in some cases people actually throw their documents overboard. Sometimes people who are actually the human smugglers themselves try to come to Canada, and are among the people who land.

Do you think for a moment that it would be wise for Canada just to allow these people to be released into the general public, without proper identification so we can understand who they are? As a Canadian citizen, a taxpayer, and someone who has children, I would be very concerned if we were to simply say, "You've arrived. Let's not process you. Let's not identify you. Let's just release you and keep our fingers crossed". Do you think that's the proper way to go?

Mr. Richard Kurland: I've fielded this question for almost a quarter century now. No matter how much money or technology you throw at the problem of illicit migration to Canada, every year since World War II, 30,000 to 40,000 people have entered illegally without ID, seeking access to Canada. Have you costed the detention of that number of people for that period of time? It won't work in deterring future arrivals. It won't work as a valid use of taxpayers' money.

● (0940)

Ms. Roxanne James: Thank you.

I just want to clarify one other thing. When we talk about this bill, I keep hearing that there will be mandatory detention for one year. That's not correct. I want to clarify that at this committee today, because I keep hearing it.

In fact, once most refugees are identified they can be released. I want to make that perfectly clear, because I keep hearing the words "prisons" and "mandatory detention for one year", which is not really the case.

Mr. Kurland, I have a couple of other questions. On other options to prevent illegal immigration, some people have suggested that we simply impose more visas on the countries that are currently visa-exempt. What is your opinion of that? Do you think that's the solution to all of our problems here in Canada with asylum seekers, illegal refugees, or fraudulent claimants?

Mr. Richard Kurland: First, no change will bring us down to zero intake. So if the expectation is that there's a quick fix to cure all of the problems, jettison that idea.

Imposing a visa has a direct effect in reducing refugee intake. Look at Mexico. Look at our friends in Europe. However, did that stop the flow? No. It reduced it, but at what cost? Diplomatically, we

take a shot to the head by doing that. It runs counter to our obligation to provide a freer flow of goods and services. You have to balance the cost of saving pennies on the refugee determination side with the risk of having poorly or unsatisfactorily identified individuals among us.

The Chair: Thank you.

Mr. Leung.

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

Mr. Kurland, we hear about this whole issue of detention. If a person arrives at our border without documentation, then I think that to be fair to both sides, we should deport him within three days—within 72 hours. If the person does not provide us with his identity, then he has violated a Canadian immigration law and we should be able to deport him right away.

I'd like to hear your thoughts on a speedier solution to this.

Mr. Richard Kurland: Oh, that pesky charter, eh?

Voices: Oh, oh!

Mr. Richard Kurland: It is a tongue-in-cheek question and it merited a fun reply. Yes, we would love to have the ability to expeditiously determine every case, but we're constrained by resources and the physical time required to get things done. Yes, we can improve things. The point is that Bill C-31 improves things.

I take issue with mandatory detention and the mass arrival system for the reasons I've made known. Don't overlook the positive aspects: the glass is more than half full on this one. We can do a better job on the front end if we have the resources. It's a trade-off with other sectors in government.

Mr. Chungsen Leung: You mentioned that with this bill we are trying to close a loophole in the whole immigration framework. Can you expand a little bit more on how the speedy enactment of this will allow us to move forward? I also take into consideration the previous comment about how lawyers like everything written down. Let me tell you that there have been all of these irregular arrivals via the *Komagata Maru* and the *St. Louis*—and even in my case, when I was in Canada on a Republic of China passport. Then, overnight, Trudeau recognized Communist China. I was made a stateless citizen, and I was technically an illegal immigrant in 1970.

Anyway, please comment on that.

● (0945)

Mr. Richard Kurland: Today, we no longer have a visa relationship with Taiwan.

Mr. Chungsen Leung: That's right.

Mr. Richard Kurland: That's because of this government, by the way.

Mr. Chungsen Leung: Yes.

Mr. Richard Kurland: The thing is this. I agree that more can be done. In 1989 when the identical questions and concerns were raised, they wanted a fast system, with expeditious decision-making. Guess what delivered it? At that time, there was a federal budget to directly compensate the refugee lawyers in the process. An adequately resourced refugee bar delivers fast results. I'm waving a known flag. It is the equivalent of the unemployed immigration lawyer relief act.

The reality is that if you put what we have here under the government of the day—I think it was Flora MacDonald at the time—there was compensation that did not go through the provincial legal aid systems but went directly to the refugee lawyers themselves. Magical processing times ensued. If you are serious about faster processing times, contemplate resourcing an expeditious processing system by compensating the key component in the system, the refugee lawyer.

The Chair: Thank you.

Mr. Edelmann, and Mr. Kurland, we enjoyed your spirited presentations. It is because of you guys that I love my job. I thank you also, Ms. Thomson.

We will suspend for a few moments.

• (0945)

(Pause)

• (0950)

The Chair: We're going to reconvene the meeting.

We have two witnesses, the Canadian Taxpayers Federation and the Canadian Centre for Victims of Torture. I see only one person here, so we'll see what happens.

We have Derek Fildebrandt, the national research director of the Canadian Taxpayers Federation, and we have Ezat Mossallanejad—

Mr. Ezat Mossallanejad (Policy Analyst and Researcher, Canadian Centre for Victims of Torture): It's pronounced Mossallanejad.

The Chair: —a policy analyst and researcher.

Mr. Fildebrandt, you have up to 10 minutes to make a presentation to the committee.

Mr. Derek Fildebrandt (National Research Director, Canadian Taxpayers Federation): Thank you very much.

Honourable members, on behalf of the 70,000 supporters of the Canadian Taxpayers Federation, I thank you for the invitation to testify today regarding Bill C-31.

My name is Derek Fildebrandt. I am the national research director at the Canadian Taxpayers Federation.

The CTF is a not-for-profit citizen advocacy group dedicated to lower taxes, less waste, and accountable government. We do not have charitable status and we do not accept a penny in government support—we never have, and never will.

Canadian public policy is riddled with sacred cows that cannot be touched, and very few people are willing to take the heat for wading into them. Few in Ottawa have roots in the Canadian Taxpayers Federation, however. I will pre-empt what will likely be an inevitable

point raised and note that our alumni includes Jason Kenney, the author of the bill before us today. Since he left the CTF 16 years ago to run for Parliament, we have supported several of his initiatives, including Bill C-31.

The CTF makes no claim to being immigration and refugee experts, but we are a watchdog of how our public money is spent.

The bill has our full support for three reasons. First, it upholds the belief of Canadians that our refugee system should be compassionate and welcoming. Second, it strengthens that system by making it more timely and efficient. Third, it is projected to save Canadian taxpayers at least \$1.65 billion over the first five-year period.

Included in the reforms in Bill C-31 are a new appeal process for applicants, a guarantee to remove failed applicants in a timely manner, and a safe-country designation to help streamline the process. Estimates put the waiting time for a refugee claim to be heard at 60 days under the proposed reforms, a massive improvement over the 19-month average right now.

Currently a failed asylum seeker costs taxpayers over approximately \$50,000, a cost carried mostly by provincial governments for health care and welfare spending. It is estimated that this cost will be reduced to \$29,000 per claimant under the proposed regime. This is still not cheap, but it is a marked improvement nonetheless.

The bill will ensure that refugee claimants of questionable status will spend less time using the generous health care and welfare benefits of our provincial governments, creating major efficiencies for taxpayers. In Ontario alone this will save more than \$1 billion over the first five years; in Quebec, \$465 million; in British Columbia, \$99 million; and in Alberta, \$46 million.

Getting better bang for our buck is a goal that has long been left out of the conversation around refugee policy for fear of this sacred cow, that any change would be viewed as uncompassionate or present a political target for opponents.

At the Canadian Taxpayers Federation we are critics most of the time, pointing out where governments do wrong. Here you might recall our calculation in January of the pensions of members of Parliament. Nevertheless, when governments do something right we're unafraid to support it. The government's willingness to take this on has the full support of the Canadian Taxpayers Federation and we encourage members of Parliament to work together to pass this bill and avoid the temptation on all sides to turn this into a political football.

Thank you for your time.

●(0955)

The Chair: Sir, I'm not going to attempt to say your name again, because I messed it up.

You have up to 10 minutes as well, sir.

Mr. Ezat Mossallanejad: Thank you very much for this golden opportunity.

I speak from the perspective of survivors of torture, war, genocide, and crimes against humanity. I also speak to you from the perspective of a person who came to Canada as a political refugee. I'm a victim and survivor of torture and spent four years in jail for human rights purposes.

I will share with you initially the positive aspects of Bill C-31. Then I will come to some areas of concern, and finally I will have some special requests for you.

To begin, let me bring to your respected attention that since its inception in 1977, the Canadian Centre for Victims of Torture has provided its holistic services to more than 19,000 clients from 136 countries. It is the most important centre in North America, and the second at a global level.

Let me begin with some of the positive aspects of Bill C-31. The fact that you give discretionary power to the minister to release designated foreign nationals when exceptional circumstances arise is very positive. Exemption of children below the age of 16 from detention is positive as well, but separation from their families during the incarceration of their parents is an area of concern. Finally, the consideration given to the best interests of the child and to the lack of emergency medical care in the countries of origin when someone applies on humanitarian and compassionate grounds is positive as well.

Now I come to the areas of our concern. The first concern, as a centre providing direct services to survivors, is the very short time period for processing refugee claims. It ranges from 30, to 45, to 60 days for different categories of refugees. In our view that is neither feasible nor just. It sometimes takes me three months to come up with the proper documentation of someone's torture, by using psychiatrists, psychologists, and physical practitioners. I don't know how it is possible to do that in a short time, and whether there are resources for that.

The second area of concern with Bill C-31 is the fact that almost five categories of refugee claimants are denied access to the refugee appeal division, and in some cases they are denied Federal Court remedies.

I'll give you one example. The bill has denied people whose credibility is rejected. Most of my clients contradict themselves because they are survivors. They are disassociated. They suffer from deep depression and severe mental health problems, so they are rejected. There are other remedies that in the course of time will prove their credibility. We believe they should have access to the appeal division and Federal Court remedies.

Another area of concern is the designated countries of origin. Please note that we are living in a changing world: The situation of a country can change overnight, so please be extremely careful in preparing the list.

There are also some categories of people, for example LGBT people, who are subject to torture almost everywhere. Canada is an exception. But when you just come up with designated countries of origin, they might be denied protection. We are very concerned about that.

●(1000)

Also, another area is designated foreign nationals. We are very concerned about this. Based on my experience working with refugees in Canada for 27 years, I know they can be in detention forever. They can be in limbo also for many years, because they are denied access to...for five years. They have no opportunity for family re-unification. Even if they are accepted as protected persons, they should report to the police. This is against article 16 of the Convention Against Torture that speaks to the prohibition of other inhumane, cruel, degrading treatment or punishment. Please do something about that.

Also, we are concerned about the limitation of pre-removal risk assessment and coming up with some limitation on applying on humanitarian and compassionate grounds after one year of rejection. These are the remedies for survivors of torture and we have done it in the past.

Finally, we are very concerned about the vacation of status and the cessation clause. Let me tell you that the scars of torture never go away. Psychologically, the scars will remain for the rest of one's life. People "mis-present" themselves as survivors and that should not be grounds to vacate their status. Also, a country's situation might change, but I think that is a change on its face value not real value, given the fact that impunity is a global problem and that warlords and torturers remain active even if a country's situation changes. That should not grounds to come up with this cessation of refugee status.

Now, I come to our special request. Please, our beloved legislature, I beg you to incorporate all important provisions in the legislation itself and not leave them for regulations.

My second request is to please provide the minister with the discretionary power to protect people who need protection. Even the most comprehensive legislation cannot anticipate exceptional cases.

Then my third request is to please be as flexible as possible. Tough legislation and tight restrictions will be counter-productive if they fail to consider the root causes of the problem.

Finally, you know that since 1976, the immigration act has gone through many changes, many amendments, and still you have the problem. Please come up with a vital link between immigration and human rights. Please designate an ombudsperson responsible to Parliament for monitoring immigration practices.

Thank you very much.

•(1005)

The Chair: Thank you sir. I will call you Ezat, if I could, because I don't want to insult you by trying to pronounce your last name again. Thank you for your presentation.

Ms. James has some questions for both of you.

Ms. Roxanne James: Thank you Mr. Chair.

And thank you to our two guests. I'm happy to have both of you here today, but I'm extremely happy to see someone from the Canadian Taxpayers Federation.

Yesterday in committee, I talked about welfare fraud. From talking to constituents for the last six years in my riding of Scarborough Center, east of the GTA in Ontario, I know that welfare fraud comes up again and again. People are sick and tired of welfare fraud. While we're compassionate and help refugees—and this bill actually seeks to help legitimate refugees by allowing them to be processed quicker and to integrate much faster into Canadian society—one of the key aspects is actually cracking down on the fraudulent claimants.

You talked about the cost to taxpayers, but could you tell me what it is for Ontario? Did you mention that? I didn't hear it.

Mr. Derek Fildebrandt: In Ontario it was more than \$1 billion.

Ms. Roxanne James: That's what I thought I heard, but I wanted to clarify it. I'm not surprised, but I think constituents in my riding would be shocked to hear that figure. Anything that we can do as Canadian citizens, as the government, to protect Canadian taxpayers and the interest of those taxpayers.... Everybody works hard, we pay our taxes, and we want government to make sure that money is used wisely.

I'm going to ask you a couple of questions because in my province it is a concern. Do you know offhand how long it takes someone after they have come to Canada and make an application to actually start receiving welfare cheques? I ask just out of curiosity, if you have that number.

Mr. Derek Fildebrandt: We don't have the exact time attached, but we do know that if there is an efficient part of the refugee process, it's the ability to get linked up with social services and plugged into the health care system almost right away.

As we know right now, this is costing the provinces billions of dollars primarily for health care and welfare. In the overall global figure of what this will save, provinces that take in the most refugees will see the largest savings. So the largest being obviously Ontario followed by Quebec, British Columbia, and then Alberta. That works out to \$1.65 billion.

Ms. Roxanne James: So when you say right away, you're talking in a matter of weeks?

Mr. Derek Fildebrandt: We don't have the exact time attached to how quickly they're linked in, but the refugees are supported by the government. They come here without a source of income. It's not unreasonable for taxpayers to temporarily support refugees who come here; they obviously have no means of supporting themselves.

Ms. Roxanne James: Do you think that two, five, or six years is a reasonable time to support refugees who are here by fraudulent means?

Mr. Derek Fildebrandt: No. Also, you can take other circumstances into account, such as language training. If refugees come here speaking English, they'll obviously be able to integrate into the labour force a lot quicker. But I think that attaching a deadline to how long a refugee is able to remain on social assistance before—

Ms. Roxanne James: Sorry, we've heard actually from other witnesses as well that the lucrative benefits here in Canada, for health care and welfare, are really a draw factor for many people to come here and abuse the system. We're not quite sure of the exact number of weeks it takes someone to actually start receiving cheques, but I can tell you that on average it takes 20 months for someone who comes here as a refugee claimant to have their first hearing at the IRB. So 20 months is just shy of two years. Yes, we want to make sure that the people who are legitimate refugees receive our assistance, and this bill seeks to address that because it's going to be done with a much quicker method, in a much more timely fashion.

But at the same time, we want to make sure those who are simply coming here to collect the benefits, and in some cases.... For example 95% of the claimants from the European Union, amounting to some 25% of the people who actually come here as refugees, actually abandon their claims or withdraw them. So for an average of two years, they're eligible for benefits and I think that is absolutely unacceptable here in Canada.

On behalf of the Canadian taxpayer and myself as a government member of Parliament, I thank you for coming to this committee to bring light to this. I really do appreciate it.

Now speaking of welfare, obviously it's a provincial jurisdiction. Do you think that provincial governments have a role to play to make sure that we're helping to deter bogus refugee claimants from receiving welfare? Obviously we need to help people when they arrive, but do you think that there's anything the provincial government can do to benefit taxpayers? We are footing the bill after all.

•(1010)

Mr. Derek Fildebrandt: As you're noting, fraudulent refugee claimants often have an incentive to come here because of our generous social assistance programs. While it wouldn't be in the jurisdiction of the federal government to direct them to do so, provinces lessen that incentive for claimants to come here and abuse the system. Provinces can bring in their own measures to try to determine who are legitimate refugees as well as whether these applicants should be receiving social services. Provinces provide social assistance only to those whom they really want to. It's a voluntary act.

Provinces can do their own homework as well. They don't always have to take the federal government's word for it on who is a legitimate refugee, when we have huge numbers of people coming from Europe who are abandoning their claims to begin with. Provincial governments can check the math twice and see if they should really be providing generous moneys—not just welfare but also health care and the many other benefits that come with Canadian residence.

Ms. Roxanne James: So in your opinion, provinces should really be support this particular measure in this bill because when I think of about \$1 billion for Ontario.... I'm in the GTA, and transit is a municipal issue there; I hear again and again that we need subways. I mean \$1 billion could go a long way toward helping municipalities right across the great province of Ontario.

I would like to thank you on that. I know you mentioned that the Taxpayers Federation supports the measures in Bill C-31, but I'm wondering if you've got any specific comments from some of your members on this particular bill.

Mr. Derek Fildebrandt: For full disclosure, as I said the author of the bill served with the Canadian Taxpayers Federation as its president for several years before running for Parliament. So our members are strongly supportive of this bill.

Our members strongly support having a generous and welcoming refugee system, a generous and open immigration system, but one that should not be abused. Many people come to Canada every year, and we welcome them. They're a vital part of our economy. They're a source of taxpayers, and we need them.

The Chair: Thank you.

And thank you, Ms. James.

Ms. Sitsabaiesan.

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

Thank you to both of our witnesses.

My questions are mostly going to be for Mr. Mossallanejad.

You are a victim of torture and persecution. You've been working for the last 27 years with refugees in this country. It hurts me, and probably you as well, when I hear the members opposite talk about asylum seekers as queue-jumpers. In my understanding, there is no queue when you're fleeing persecution, when your life is at risk, when you're coming to a country that is going to be safe and where you can be alive, where you can have a life. There is no queue. Asylum seekers are just that, asylum seekers.

There was also mention made of people who come in as mass arrivals. They come without proper documentation. Given your 27 years of experience, would you say that all refugee claimants arrive by plane? I ask because government members seem to think that real refugees are people who can afford a plane ticket. Do all refugee claimants who come by other means have all their proper documentation ready to go like that?

Mr. Ezat Mossallanejad: Thank you for the question.

First of all, let me tell you that being a refugee is the bitterest experience in the life of a human being. You have to leave

everything behind forever. Your legs are stuck here and your eyes look back. The whole world becomes a jail for you. The realm of freedom is a tiny corner of the globe that you have no access to. Let me tell you that refugees are people with the highest standard of values, because they raised their heads against tyranny and against human rights abuses. They contribute to the global endeavour of Canadian society in promoting human rights.

I came here as a devastated refugee. There are certain dates that you never ever forget and one was February 12, 1985, when I landed in Montreal without any documentation. In your concern to save your head, you leave your family behind, and you even leave your children behind, because if you don't escape, they will kill you. They are always after you to kill you. Then you don't bother about documentation. You are looking for asylum. It's like a fire in your flat: When fire is coming from all sides and there's only one window open to the neighbour's house, you jump and you don't bother. There is no documentation.

I think what is at stake today is Canadian compassion. We have always been proud of Canadian compassion. Let me tell you that in Canada, I worked for five years doing hard physical labour, although I came with a Ph.D. degree in political economy, and I used to be an assistant professor of political economy. In Canada I did my best to contribute. I said, "Down with political economy. I want to serve human rights". I joined a Jesuit centre and I work with refugees and for refugees.

The challenge is building a new home in a new country, and I'm very happy that I did it successfully here. I have published three books, and I have published at least 70 articles. I'm working very hard. I'm a member of many organizations as a volunteer. I'm on the board of the Canadian Centre for International Justice. I'm a proud Canadian. Don't think that refugees or asylum seekers are a burden. We also contribute.

● (1015)

Ms. Rathika Sitsabaiesan: Absolutely. You're here clearly—

Mr. Ezat Mossallanejad: Please be compassionate as legislators. Governments come and go, but the law will stay forever, not our legislators.

Ms. Rathika Sitsabaiesan: Mr. Mossallanejad, you're clearly an example of a refugee who has come to Canada and has contributed so much to this country. As you said, this legislation is missing Canadian compassion, the element of Canadian compassion. I saw Mr. Fildebrandt nodding his head, as well, in agreement with you. And I agree with you.

I want to talk about the penalties, the penalization of refugees, in this bill. As you mentioned earlier, there is mandatory detention without a review before the immigration division for 12 months, and the denial of the right to apply for permanent resident status until five years have passed since arrival in this country.

The fact that these and other penalties are based on the mode of arrival in this country is, I think, quite problematic. These penalties are only for refugees who are designated as irregular arrivals. That means.... Actually, it's not really defined in this bill, as far as I see. But it's based on the mode of arrival. The removal of the remedies actually created for victims of persecution I see as a problem.

How do you feel about that, Mr. Mossallanejad?

Mr. Ezat Mossallanejad: First of all, let me share with you one dark page in Canadian history and one bright page in Canadian history.

The dark page goes back to 1939, when Canada sent a boat of Jewish people back to the high seas. The bright page comes with Canada receiving the Nansen Medal for protecting boat people escaping war in southeast Asia.

Now we have come up with a new category: designated foreign nationals.

Yes, I agree that smuggling should be fought. I'm with you. But again, why should we penalize victims rather than victimizers?

The Chair: Thank you, Ezat.

We'll go to Mr. Lamoureux.

There's a point of order by Mr. Weston.

Stop the clock, please.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): On a point of order, Chair, I didn't want to interrupt, because that was an important dialogue, but I think it was a little unfair for my colleague to impute something that was being said through non-verbal communication by another witness when he couldn't speak for himself.

• (1020)

The Chair: Politics is a tough thing. I'm sure that the government members will ask Mr. Fildebrandt whether that was correct or not. You may or may not be correct. I didn't see it, and it's not my job to correct....

Mr. John Weston: All right.

The Chair: Well, maybe sometimes it is.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Thank you, Mr. Chair, and I thank both presenters for coming here before us today.

I first want to pick up on what the Taxpayers Federation said. Their overriding concern seems to be wanting to save tax dollars for Canadians, and that's admirable.

It's been over the last number of years that this whole backlog issue of our taking years to process refugees has really come to the surface. In the last four or five years, have you figured out how much that extended prolonging of processing has cost the taxpayers?

Mr. Derek Fildebrandt: We haven't seen a dollar figure attached to it, although I think that would be a valuable figure for the Department of Citizenship and Immigration to produce. I think it would provide a lot more light to the discussion we're having.

How much is that backlog costing taxpayers? We know that they've attached a dollar figure to clearing that out and having a speedy process. It's good policy in terms of processing refugees in a timely manner: It's good for the refugees and it's good for the Canadian taxpayer, because it's moving them off that queue. But it's also good policy in terms of knowing how much extra we're spending by keeping people in that backlog, wasting the time of legitimate refugee claimants and wasting the money of the taxpayers who are paying for it.

Mr. Kevin Lamoureux: You see, that's one of the concerns we had about the minister of immigration years ago not filling some of the appeal board appointments, thereby creating an additional backlog and ultimately adding to the costs the federation is concerned about.

One of the suggestions from an earlier presenter was that there should be the possibility of incorporating a pool of money within the federal budget to help facilitate this, by providing some basic services to some of these refugees. Is this something the federation would support?

Mr. Derek Fildebrandt: Are you talking about supplementing the costs that the provinces bear for refugee claimants?

Mr. Kevin Lamoureux: The suggestion of providing assistance for refugees through a different form of legal aid was made under the Progressive Conservatives back in 1989. That was a great way to deal with the backlog. Ultimately, it would have saved considerable dollars, no doubt. Is this something that the federation would support?

Mr. Derek Fildebrandt: We would have to see dollar figures attached to it. For every measure, there's a cost and a benefit. We would have to see the dollar figures attached to that. It's not something that we've studied in any depth.

Mr. Kevin Lamoureux: Ezat, if I may use your first name, I caught that you came to Canada on February 12, 1985. I was wondering if you could tell me—and it's a bit of a personal question—how long it took you to become a refugee from the moment you arrived in Canada. I assume you're a citizen now. Can you give us a timeframe of your personal experience?

Mr. Ezat Mossallanejad: It took me four months to go before an immigration officer. It took me another four or five months to do an examination under oath. At that time, we didn't have another way. They sent me the documents and asked me to correct them. It took another two months, and then I got my convention refugee status. After another year and a half, I got permanent resident status.

Mr. Kevin Lamoureux: You come across as a very knowledgeable, passionate man with a great deal of life experience. I'm wondering, with that perspective, what would you say would be an appropriate timeframe? I'm thinking of those individuals who landed from the *Sun Sea* or the *Ocean Lady*, just over 560 people total. From your perspective, how would you like to see those develop?

Mr. Ezat Mossallanejad: First of all, I think justice should be provided to all claimants across the board. I don't understand discrimination. For example, people who are exceptions to a safe third country are denied some remedies. Why? I don't understand.

Secondly, the timeframe should be adequate for the documentation of people's persecution and, specifically, torture, because a survivor comes with so many scars. We have to send that person to a physical practitioner. They take x-rays. They do all these—

• (1025)

The Chair: I'm sorry. Thank you.

Mr. Leung, you have the floor.

Mr. Chungsen Leung: Thank you to the witnesses for being here.

My question is for Derek Fildebrandt. I want you to give us a clearer understand of the total cost of documenting the illegal arrivals and refugees. We sometimes confuse refugees with other arrivals.

The figure of \$50,000 per year has been tossed around, but I think the cost is more pervasive than that, because there's a cost to the economy. There's a social cost. There's the cost to government having to provide security, provide the supervision, and perhaps the legal aid. Would you mind just running through the federal, provincial, and municipal levels of what those costs are? We might come up to a figure approaching close to \$100,000 per person or per family. Would you please comment on that?

Mr. Derek Fildebrandt: Thank you for that question. That's a very good point.

The costs that have been attached to processing and maintaining the average refugee claimant at \$55,000 are primarily, as I said, focused on health care and welfare costs, and essentially direct transfers to the individual.

There are many other costs, some of which are buried, such as using our roads. Those are shared public goods. They are using public goods paid for by taxpayers. Those are sometimes buried costs. I suppose that policing will depend a lot on the circumstances. These costs won't include the cost of policing extra individuals, or participating in the other broad basket of the many goods that come with living in Canada, the broadest one being national defence.

As I said, many of those costs are buried; some of them might be more direct. They're harder to attach a direct figure to than what Citizenship and Immigration has already done with direct transfers to individuals.

Mr. Chungsen Leung: Would you agree that if we had a method where we could quickly establish their identity and therefore be able to deport them, it would save us some of these costs? What I'm saying is that if there were a method for biometric determination of identity or some other form of establishing identity in a more expeditious way, then that cost could be significantly lower.

Mr. Derek Fildebrandt: This is one of those cases where you'll actually find our advocating, perhaps, for a further concentration of government resources and funding, because the quicker we can process claimants the quicker we can get legitimate refugees integrated into Canadian society and the quicker we can get bogus refugees deported to their place of origin.

I think there are further costs that could be provided in regard to the bill, in terms of the resources that could be provided for speeding up the process. But we do know that the quicker we can process people, the quicker we can get them into society and the quicker we

can get bogus refugees out of the system to where they came from, and not take up the resources of Canadian taxpayers.

Mr. Chungsen Leung: As parliamentarians we sometimes have a dual role, one being to safeguard the taxpayers' money and protect our borders, and the other as Canadians to be compassionate and humanitarian.

Given that set of lenses, perhaps you can indicate to us how you would see the right balance being struck between those two ideals.

Mr. Derek Fildebrandt: As was noted, I nodded in agreement with some of the statements of Ezat earlier, because I strongly believe, and the Canadian Taxpayers Federation strongly believes, that Canada's refugee system needs to be open, compassionate and welcoming to those who face persecution. But I don't believe this bill makes the system less compassionate. In fact, I believe it makes it more compassionate, because it means that it cannot be abused by those who are not legitimate refugees, or at least that it will be less likely to be abused, and it expedites the process for legitimate refugees. I believe it makes our system more compassionate.

My grandparents fled communist East Germany as refugees into the west, and eventually were welcomed as immigrants into Canada. My family has direct experience with fleeing from tyranny, fleeing from oppression, and of experiencing the generosity of Canada opening its borders to people who want to become Canadians and contribute to society. I believe passionately that we need to welcome legitimate refugees with open arms. I believe this bill actually strengthens that compassion. I don't believe it diminishes it at all.

• (1030)

Mr. Chungsen Leung: Therefore, you agree that by discouraging people from simply walking into this country and saying they're claiming asylum, it will actually be a fairer system for them to go through the proper channels under Bill C-31 when coming to Canada?

Mr. Derek Fildebrandt: Yes. Absolutely.

When I talk to people about immigration and refugee reform, I find the strongest support among first and second generation Canadians, not people who have been here for many generations. People who came through the process legitimately, people who waited in line, who queued up who did so legally, I find are the most supportive of these kinds of reforms.

I think this is absolutely necessary. It's not just good news for taxpayers, whom I'm here representing, but it's actually good policy for refugees overall.

Mr. Chungsen Leung: Thank you.

Mr. Chair, how much time do I have?

The Chair: You have 30 seconds, if you want to say goodbye.

Mr. Chungsen Leung: Okay, that's fine. I'll say goodbye.

The Chair: Okay.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

I have just a request, Derek. Right at the beginning I know you used a lot of figures today, which you've thrown out at us, as to the cost and the savings. I was wondering if you could supply the data you based all of your numbers on to the clerk to the committee.

Mr. Derek Fildebrandt: Absolutely, I'd be happy to.

Ms. Jinny Jogindera Sims: I appreciated hearing your comments on the compassionate nature of Canada and how historically we have taken in people from all around the world who've come here as refugees.

I want to move on to you, Ezat, with a question.

As you were talking, I could feel the pain that you still live with from your own personal experiences. I'm trying to imagine what it would be like for a group of people who are escaping that fire you described. There's a fire burning all around them and they're trying to escape that fire. That's the situation, whether it's in a refugee camp or a place where the refugees' lives are in danger and they have to escape. They get on a boat and they arrive on the shores of Canada. What kind of a psychological impact will there be on those people when the first thing they face is detention in a jail?

We're not talking about five-star hotels here—even the detention centres. What we are talking about, even today from the regular numbers that were given to us by officials from government, is that these people on a daily basis still have to be put in provincial jails because there aren't enough immigration detention centres.

I would like you to describe for us what you feel would be the impact on people being imprisoned upon arriving after fleeing from a burning fire.

Mr. Ezat Mossallanejad: We call this process re-traumatization. When you have gone through multiple trauma and you come here seeking open arms but are put into a jail, your whole experience of torture comes back. The impact never goes away for your life; there will be paranoia and so many disorders.

When you speak about the taxpayers, let's not forget that the final losers will be the Canadian people and Canadian society. Keeping people in detention is costly. The removal process is costly. If we deny welfare to people, the alternative is to let them beg. Sometimes they commit crimes. These are all costly. If we want to save some money for taxpayers, we have to pay more. The impact is horrible.

• (1035)

Ms. Jinny Jogindera Sims: One of the other elements of this bill, and Minister Kenney has been very clear on this, is that parents will have a choice. Let's say people arrive on the shores of Canada. If they have children under the age of 16, they've got two choices. For parents escaping from a fire and arriving in Canada, I want to know how much of a choice there is. They can either keep their children with them in detention, in prison, in jail, or they can hand their children over to the authorities of the province in which they are being located. What kind of a psychological impact would this have not only on the parents but also on the children, remembering that the children are escaping from that same fire?

Mr. Ezat Mossallanejad: Every year we serve almost 300 children who are survivors of torture and war. Unfortunately, any horrible event, such as separation from family, incarceration, maltreatment, will have a durable impact on the psychology of

children. The result will be a very bad life in their adulthood. It never goes away.

Ms. Jinny Jogindera Sims: And the costs to Canadians would be higher.

Thank you.

The Chair: Thank you, Ezat.

Mr. Weston.

Mr. John Weston: Thank you.

Mr. Leung, welcome.

And thank you both for being here this morning.

I think this is an extraordinary hour that we have with you, because we see two sides of what I would call a false dichotomy. It's so easy for people to say that you either have compassion or conserve on costs. That's not what anybody in this room is about. Every person in this room cares about human rights. I'm sure that even someone who's gone through the horrific history that you've described to us, Mr. Mossallanejad, also has concerns for conserving the taxpayer's money. You referred to that. It seems to me that we must avoid the false dichotomy. In fact, if we don't preserve the taxpayer base, we will erode the ability to accommodate the refugees and lose the democratic will that allows us, as a government, to do what we do. I thought you said it so beautifully in your final sentence, Mr. Mossallanejad, when you said, please link human rights to immigration.

I remind everybody in the room that our minister is one of the world's top advocates for human rights. Wherever he goes, he pleads unapologetically for human rights around the world, in Iran, in China, and in other places. So I think there's more that unifies us in this room than divides us.

Section 91 of our BNA Act, better known as our Constitution Act, talks about "Peace, Order, and good Government". So I would disagree with my colleague, Ms. Sitsabaiesan, who says there's no queue. In fact, if we allow chaos at our borders, we will not be able to have an immigration or a refugee program. We mustn't forget, either, the security of Canadians. Detention is not prison; detention is at least comparative safety for some people, and it's an ability for Canadians and refugees to come together.

So with the goal of finalizing a refugee claim in 45 days instead of 1,038 days, may I ask, does that have a ring of compassion to you, who have undergone the things you've undergone, Mr. Mossallanejad?

Mr. Ezat Mossallanejad: First, I agree with you about false dichotomy, but I also beg you for a balance in any kind of legislation.

Secondly, about detention, detention should be conceded as the last resort, not as a shortcut.

About the timeline, I think the main issue is due process. So we need a timeline that will allow us as a service organization to be able to provide all necessary documentation. Also, a shorter timeline looks like a summary trial, and that should be avoided.

• (1040)

Mr. John Weston: Mr. Fildebrandt, we heard similarly from three prominent lawyers yesterday, and as a lawyer myself I believe in due process. Clearly, when you're in the position of government and you have to make decisions, you can't do everything for everybody all the time. In order to have a sustainable refugee program, how do we manage to balance due process and these other things? What would you say?

Mr. Derek Fildebrandt: Again, I would echo what Ezat said and support what you're saying, that we're often presented with the false dichotomy of saving money or being compassionate. I don't believe it's an either/or. Governments have to make tough decisions, and I think this bill is actually an example of making proper tough decisions.

Your question was how we can preserve due process but also ensure that we're getting value for money for taxpayers. I think this bill does that with the designated country provisions for countries that we know are not gross human violators. We know that countries within the EU are not in the same category as Cameroon. Any statement to the contrary would be pure political posturing. We don't need endless appeal processes for people coming from advanced western democracies. So I think that's one of the most important parts of the bill.

We will continue to have appeal processes for people coming from Cameroon, as an example, but it's a different category from the EU.

The Chair: Thank you.

Mr. Menegakis.

Mr. Costas Menegakis: I want to thank both of you for joining us today.

Mr. Mossallanejad, I thank you for sharing your personal story and I can appreciate that you went through some very difficult times.

Mr. Fildebrandt, I'm curious to find out what you're hearing about the government's recent announcement to ensure that refugees don't receive more generous benefits than Canadian taxpayers. We hear this a lot from our constituents.

Mr. Derek Fildebrandt: If nothing else, this will strengthen support for an open and generous refugee system, because Canadians will no longer believe that the system is unfair. An important part of this is maintaining the support of the broad Canadian electorate for an open immigration system, an open refugee system, and a part of that is ensuring that people know that they're not being treated unfairly relative to those who come here. So if nothing else, it will strengthen public support for our refugee system.

Mr. Costas Menegakis: One of the main goals of Bill C-31 is to identify people who want to come into the country through illegal means, which would be unfair to people like Mr. Mossallanejad and many others who came here to seek asylum from persecution and possibly death and torture in their countries of origin. These people today can wait as long as 1038 days. That's almost three years from

the time their application goes in. They fall behind bogus applicants, behind people from the European Union. The European Union is a union of 27 countries. So if someone feels unsafe in one of those 27 countries, all of which have democratically elected governments, they have 26 other choices they can go to.

Mr. Mossallanejad didn't have the choice of going to 26 countries where he would be safe. So folks like him need to get priority. There's the compassion in Bill C-31—to service people who need it faster and allow them to come into the country faster and not fall behind these bogus applications, many of which are being abandoned, creating a cost problem and clogging the system.

Once somebody claims refugee status, we need to go through the process of assessing the application on its merits regardless of where they are in the world. Bill C-31 addresses that issue and focuses attention on the people who need it most. I think it's important to bring that up.

Do you think Bill C-31 would reduce human smuggling into Canada by eliminating the ability to take advantage of our generous immigration system and social services? They're using it as a fast track to get in, blocking people who legitimately need it.

• (1045)

Mr. Derek Fildebrandt: According to basic economics, if you want more of something, subsidize it; if you want it less of something, tax it; if you want none of something, nationalize it. If you want to reduce bogus refugee claimants, lessening the incentives is one of the first places to go. If you come here, you're not going to get free rein of the country. The bill deals with that. Also, you're not going to be roaming around for over a thousand days using Canada's health care and welfare systems.

By reducing those incentives, we should significantly reduce the number of people attempting to scam the system. This is good for both ends of the system: it's good value for Canadian taxpayers not getting ripped off and it's even better for legitimate refugees not having to sit around for 19 months, wallowing away, wondering what their status is going to be before they can get accepted into Canadian society.

The Chair: Thank you.

Ms. Sims, you have three to four minutes.

Ms. Jinny Jogindera Sims: Thank you very much.

There seems to be a generalization here that unless you come here with documents, you're somehow not a refugee. Yet, Ezat, if you had arrived here on a boat with five or ten other people, you would have been subject to being thrown into a prison under this bill for a year, and then for five years you could not get your PR and you would not be able to apply for your family members—which could actually then take about ten years before you could be reunited. At the same time we're hearing a lot about Canadian compassion.

What would have been the impact of that on you personally? The “fire” that you left behind, the torturous situation, would have been the same had you arrived in a group by boat or had you arrived on a plane without documentation. Can you please expand on that a little bit for me?

Mr. Ezat Mossallanejad: We have served clients who have come from countries suffering from collective trauma, from war, generalized violence, and genocide. There is no option in some cases other than to escape together. I think they should not be subjected to discrimination. The impact of jail, imprisonment, and being kept in limbo forever is horrible. They cannot recover for the rest of their lives.

I have clients who have become paranoid because of that. One client went through the same experience, in being maltreated by an immigration officer. That came as a shock to him. For the last 17 years he has been under psychiatric care, with very costly medication. He has never been himself again.

Ms. Jinny Jogindera Sims: So this two-tiered way of looking at arrivals in Canada, asylum seekers, depending on the mode of transportation, could actually end up proving to be far more costly to Canadians in terms of health care costs than the current system we have. Would you say that?

• (1050)

Mr. Ezat Mossallanejad: I do agree with you, and I am just working with clients who have come upon the same problem in a milder way. I don't know what will happen with this legislation if it gets royal assent and is implemented. I think there is a need for amendment, radical amendment and revision.

Ms. Jinny Jogindera Sims: Also this legislation has built into it the idea of people being sent back when the conditions in the home country improve. In other words, you could be here for 10 years and suddenly the situation in your home country improves, and you could then be sent back. What kind of an impact would that have on asylum seekers whom we've accepted as refugees and are now living in Canada and have had children in Canada?

Mr. Ezat Mossallanejad: I can tell you that if they sent me back today, I'm not afraid of execution because death is once and for all, an end of your life. I'm afraid of torture. Canada is committed to the convention against torture. I'm very happy that this legislation mentions protection against torture, but I'm frustrated that there is no attention in this legislation to survivors of torture, war, genocide, and collective trauma.

The Chair: Thank you, sir.

Thank you, Ezat, and Mr. Fildebrandt for excellent presentations. The committee appreciates those. Thank you very much.

We will suspend for a few moments.

• (1050)

_____ (Pause) _____

• (1055)

The Chair: We will reconvene.

We have one further witness. Apparently the second witness cancelled late yesterday afternoon, so we just have the one witness today. There are three representatives of the Barreau du Québec. We

have Nicolas Plourde, president of the bar association. It's an honour to have you here, sir.

We have Mitchell Goldberg, who is a lawyer and a member of the committee on immigration and citizenship. Good morning to you.

Mr. Mitchell Goldberg (Lawyer, Member of the Committee on Immigration and Citizenship, Barreau du Québec): Good morning to you, Mr. Chair.

The Chair: We also have Carla Chamass, who is a lawyer and a researcher. So we have three lawyers here today.

You have up to 10 minutes to make a presentation, sir.

[*Translation*]

Mr. Nicolas Plourde (President of the Bar, Barreau du Québec): Thank you, Mr. Chair.

Ladies and gentlemen members of the committee, as the elected President of the Barreau du Québec, I want to thank you for inviting us today to discuss such an important issue for Canadians—the security and effectiveness of our immigration system.

I would like to begin by emphasizing the importance the Barreau du Québec attaches to the improvement of the security and effectiveness of the Canadian immigration system. I invite you to read about the Barreau du Québec's previous involvement in the area of immigration, especially the letters regarding bills C-49 and C-11.

As you probably know, the Barreau du Québec is a professional order with a membership of 24,000 Quebec lawyers. The Barreau is proud of its worldwide involvement in the implementation of democratic governance and institutions founded on the rule of law. Its primary purpose is protecting the public. In that work, it strives to carry out its social responsibility by standing up for the democratic values of our society, including human rights.

The Barreau du Québec has reviewed Bill C-31, which reintroduces Bill C-11 and amends the Balanced Refugee Reform Act. The Barreau du Québec fears that the changes the bill makes to the classification process will result in discriminatory and differential treatment of claims, which may undermine claimants' confidence in the legality and legitimacy of the decisions made regarding their refugee protection claims.

That being said, the Barreau du Québec believes that protecting the Canadian immigration system is indeed an important issue and that the Canadian government is right to try to deter illegal immigration. That may make it necessary to circumscribe certain rights in the public interest. However, the bill contains harsh measures, including the automatic detention of designated foreign nationals for a period of up to a year. My colleague Mr. Goldberg will tell you more about the negative effects we fear regarding this measure.

The Barreau du Québec is also opposed to the restriction of the right to appeal a decision on its merits to the Refugee Appeal Division. The Barreau believes that an applicant's confidence in the state calls for the promotion and maintenance of a judicial structure of accessible and independent tribunals, as well as just and effective representation.

Before I yield the floor to my colleague, Mr. Goldberg, for a more thorough account of the Barreau du Québec's position, allow me to quickly introduce him. Mr. Goldberg has been a lawyer and a member of the Barreau du Québec since 1989. He is a member of the Barreau's committee on immigration and citizenship. He has been working in immigration and refugee law since 1990. Therefore, he regularly represents foreign nationals in all sorts of cases involving various immigration applications and refugee protection claims in Canada.

Mr. Goldberg is heavily involved in his area of expertise. He worked as a volunteer for a human rights organization in Guatemala. He is also active within the Canadian Bar Association and its liaison committee with the federal court. He is one of the founding members of the Canadian Association of Refugee Lawyers, where he has been the vice-president since 2001.

Mr. Chair, with your permission, I yield the floor to my colleague Mr. Goldberg.

• (1100)

Mr. Mitchell Goldberg: Thank you very much, Mr. Plourde.

I am speaking to you today not only as a lawyer, but also as the father of two children. I have two daughters: Sabine, 13 years old; and Naomi, 17 years old. My children were the inspiration for the following three scenarios.

In the first scenario, I arrive in Canada with Naomi and Sabine. The minister designates me as an irregular arrival, which means that I must be detained. Naomi, who is 17, is also subject to that system and must be imprisoned for 12 months with me. However, Sabine, who is 13, will have a so-called choice: she can either go to prison with Naomi and me, or be placed in an institution for 12 months and separated from her father and sister. Those are the options provided by Bill C-31. Not only as a lawyer, but also as a Canadian, I am ashamed to think that vulnerable individuals who are seeking protection in Canada may be detained.

In the second scenario, I am a Syrian refugee. I am an opponent of the current regime and have consequently come to Canada to seek protection. Fortunately, the court has recognized me as a refugee; I have been granted refugee status. Unfortunately, according to Bill C-31, as I have been designated as a refugee, I will be able to apply for permanent residency only in five years' time. I am very desperate to bring to Canada my daughters, who are still in Syria. I am afraid that the military members of the Syrian government are actively searching for me. I fear that, if they find my daughters, they will abuse them and ask them where their father is. I am afraid that, when my girls say that they don't know or that their father is abroad, they may be in physical danger. However, there is nothing I can do to bring them to Canada. I will not even be able to begin the process before my five years is up, and that means it may take seven years after I am recognized as a refugee for me to bring them over. That means that Sabine, who is 13 years old, will be 20, and Naomi, who is 17, will be 24, before I can see them.

• (1105)

Here is the third scenario. I arrive in Canada in 2000, from Algeria. I am recognized as a refugee. In 2002, I become a permanent resident of Canada. I marry a Canadian woman. We have

two children, who are now four and seven years old. Of course, my children are Canadian, since they were born in Montreal. The minister is now claiming that circumstances in Algeria have changed, as the war has ended. There is still some violence, but the situation is not like it was in 2000. According to the Bill C-31 provisions on cessation and conditional permanent residency, I may have to appear before the board. My only defence will be claiming that the situation has not changed. I have always told the truth, but I may be sent back to Algeria. I could not use the best interest of my Canadian children as an argument. I have no right to an appeal. There is no forum where humanitarian considerations can be invoked.

[English]

The Chair: Mr. Goldberg, perhaps you could wind up, sir.

I didn't mean to make you stop. You can just finish.

Are you finished?

[Translation]

Mr. Mitchell Goldberg: Yes, thank you.

[English]

The Chair: Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Mr. Chair.

I appreciate the three of you being here this morning. I apologize that one of our witnesses had to withdraw. We normally like to have two witnesses per session, versus one. But I certainly appreciate that the three of you are here.

I've read your submission.

First, Mr. Goldberg, I wanted to respond to your three examples and scenarios that you give. I would like to think that if one or both of your two children, whom you spoke so passionately about, were in any way harmed by someone who was on a boat and came to this country and who wasn't identified and was allowed to roam freely into our country, someone who was either a terrorist, a criminal, or a human smuggler, you would be at this committee asking for us to ensure that legislation or a regulation were passed to protect your children. While I understand the arguments that you present by way of a scenario of their being on that boat, I would submit that you should also put yourself and them in the scenario of coming in harm's way because of a flood of individuals coming to this country who may be dangerous—thought not all are. We've documented the last two ships that came here. There weren't many on board who would be considered criminals, war criminals, or those who should not be in this country or would not have received a visa to come into this country. As government representatives we have a dual responsibility to ensure human rights and to protect them. I would submit to you that this is what we are trying to accomplish here with Bill C-31.

I've read your submission. The only thing I found in it in terms of a recommendation or amendment was the withdrawal of Bill C-31. Is that the only amendment you're submitting to the committee today?

• (1110)

Mr. Mitchell Goldberg: Thank you for your question.

Yes, the Quebec Bar is concerned about protecting the integrity of the immigration system.

Mr. Rick Dykstra: I've only got seven minutes. I was making more of a statement than I was—

The Chair: Mr. Dykstra, you asked him a question.

Mr. Rick Dykstra: I did.

The Chair: He's trying to answer it.

Mr. Rick Dykstra: Okay. Thank you.

The Chair: Mr. Goldberg.

Mr. Mitchell Goldberg: Thank you.

There were several comments there I'd like to respond to. I appreciate the question.

Yes, the Quebec Bar is concerned about the integrity of the system. Of course, the Quebec Bar, like I think every group that has appeared before you, is also concerned about protecting the security of Canadians. However, this bill has nothing to do with protecting the security of Canadians. To be frank, this bill totally misses the mark. It has practically nothing to do with protecting Canada from smugglers or criminals, as you allege. It has nothing to do with keeping refugee children safe on boats. It is entirely about preventing refugees from coming to Canada and, once they're here, punishing them, that is, punishing refugees and permanent residents for being in Canada and for coming to Canada as a place of refuge.

To answer your question about the position of the Quebec Bar, the Quebec Bar agrees with the Canadian Bar Association and the Canadian Association of Refugee Lawyers and human rights groups across the country that this bill is so inimical to human rights and refugee protection that the only proper way to deal with this bill is to withdraw it.

Mr. Rick Dykstra: Obviously that's not going to happen. I appreciate your perspective on it, which is why I was seeking to know whether there were some amendments that would be helpful. You've identified a number of areas that you're concerned about and you didn't necessarily offer specific amendments for those concerns.

I have a couple of other questions. First, on page 8 of your submission you say that the *barreau* urges the government to allow 38 days for the filing of forms at the beginning of the process, which is actually 10 days longer than the current process that we use. But on page 9 in your last paragraph you actually refer to the 28-day time limit. I'm assuming that the 38 is just an error and it should read 28?

Mr. Mitchell Goldberg: Yes, it is 28.

Mr. Rick Dykstra: Thank you.

The first part of your submission talks a lot about the designated country class. I want to talk about that, or ask you some questions about it, because you refer to the exercise of how the process will work as having "ill-defined criteria". I wondered about that, because while you refer on page 6 to the United Nations Human Rights Council being in support of one of the recommendations you're moving toward, when it comes to the designated country, you're opposed to it. Abraham Abraham actually said at the standing committee that:

...[the] UNHCR does not oppose the introduction of a "designated" or "safe country [of] origin" list as long as this is used as a procedural tool to prioritize or

accelerate examination of applications in carefully circumscribed situations, and not as an absolute bar.

I wondered why you use the UN to support part of your argument, but on the other hand, when it comes to designated countries, you're not prepared to support Abraham Abraham's position on it, nor to support the United Kingdom, Ireland, France, Germany, the Netherlands, Norway, Switzerland, and Finland, among a number of others that actually have the designated safe country.

• (1115)

Mr. Mitchell Goldberg: It's a good question. I support the position of the UNHCR that is reflected in the Balanced Refugee Reform Act, because the Barreau, like other groups, supports the Balanced Refugee Reform Act, which the immigration minister also supported at the time and all the opposition parties as well.

In fact, the position of the UNHCR—which, by the way, was with regard to the designation of safe countries and not the designation of irregular arrivals—was that it's okay to expedite certain claims, but it's not okay to deprive people from certain countries of an appeal on the merits. That has been the position of the Quebec Bar and other groups across the country, and that was the position of the minister, as reflected in this government's support for the Balanced Refugee Reform Act.

The Chair: Thank you.

Madame Groguhé.

[*Translation*]

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

I want to thank our witnesses for joining us this morning.

Yesterday, professor Macklin warned us in her testimony about Bill C-31, which would violate the principles of natural justice and the rule of law. We have heard a number of testimonies, and I admit that I am quite worried, especially since the human faces of refugees or refugee protection claimants have been completely blurred out and set aside.

Here are my questions. In your brief, you claim that a year of mandatory detention in the case of illegal arrivals is unreasonable and excessive. Could you give us a more in-depth explanation of what you consider to be unreasonable and why it is excessive, especially in light of the charter and of international law?

Mr. Mitchell Goldberg: Thank you very much for the question.

It is very clear that the mandatory detention is a violation of the Canadian charter—sections 7, 9, 10 and 12 in particular. The Supreme Court has already made a relevant ruling in the Charkaoui case. The chief justice spoke very eloquently when she said it was unacceptable to detain immigrants to Canada for an extended period of time without granting them the right to a judicial review.

You know that the current legislation provides mechanisms for detaining individuals if there are doubts about their identity. That is already in place. In addition, if people are suspected of being a threat to public safety, they are detained. However, judicial reviews are conducted to ensure that unlawfully detained people are released.

I think we would have to go back to the Second World War to find a similar situation in Canada, a democratic country. We would have to go back to the mass detentions of Canadians of Japanese origin. That was the last time, in Canada, that individuals were sent to concentration camps simply because they were of Japanese origin. We can draw a parallel between that situation and what the government is proposing in Bill C-31, and that is unacceptable.

Mrs. Sadia Groguhé: Thank you.

In your brief, you also say that the mandatory detention procedure violates the *habeas corpus* rule. Could you tell us more about what you mean by that?

Mr. Mitchell Goldberg: The Canadian Charter of Rights and Freedoms simply states that, if someone is detained, they have the right to be heard by a judge, so that the reasons for their detention can be assessed. That is a basic rule in a free and democratic country. A person cannot be detained without an independent judge assessing the government's right to detain them. Lawyers, the Canadian Bar Association and the Barreau du Québec, human rights groups and average Canadians are shocked to see the government proposing something like this. I trust that the courts of law will repeal this legislation. Why even introduce a bill when it's already known that it violates the Canadian Constitution?

• (1120)

Mrs. Sadia Groguhé: I agree with what you just said. Other witnesses have made the same comment, regarding the possibility of taking the matter to court and initiating lengthy proceedings.

Could you quickly explain to us how the bill's retroactive nature will offend the rule of law?

Mr. Mitchell Goldberg: There are several aspects concerning retroactivity. I am mainly referring to the fact that the minister's designation power is retroactive to 2009. That means that those who arrived in Canada on board *Sun Sea*, for instance, will not be able to apply for permanent residency or bring their children and husband until their five years' is up, even if they are recognized as refugees. They won't be able to apply for a passport or travel documents before the five-year period is up.

Mrs. Sadia Groguhé: As you know, Bill C-31 provides the minister with the new power to revoke permanent residency from protected persons if the situation in their country of origin changes and they are no longer at risk. The minister said that was not the intended effect of the bill's provision. However, you and many others have expressed your concerns.

Could you explain how you came to that interpretation and why that situation worries you?

Mr. Mitchell Goldberg: This interpretation is shared by legal experts across Canada: the Canadian Bar Association, the Canadian Association of Refugee Lawyers, the Quebec Bar. At least eight law professors who specialize in immigration matters have expressed their opinions about it.

Clearly, it is a new power. We are not talking about people trying to commit fraud. These are people who have always told the truth; it is just that the circumstances in their countries of origin have changed. They are permanent residents. This new power does not exist in the current act. If the minister claims that such was not his

intention, all he has to do is amend the bill to make it clear. I have heard that the minister wants to clarify this aspect of the bill, and I think that is encouraging.

[*English*]

The Chair: I'm sorry, but I have to interrupt you. We have only so much time to allow you to speak, and I apologize.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Goldberg, I want to take advantage of the fact that you are head of the Quebec Bar association. Is that correct?

Mr. Mitchell Goldberg: Mr. Plourde is the president.

Mr. Kevin Lamoureux: Okay. I will direct my question to him.

The refugee bill that we have before us is in good part, as the government will tell us, to benefit the refugees. It's interesting. My understanding is that the appeal division in Ottawa is going to be closed down. Therefore, refugees in Ottawa will have to go to Montreal to have their cases heard. I'm not sure how that will work in terms of legal aid, for example, in the province of Ontario.

Could you comment on that? I realize it's not the most relevant question. It's just to highlight the fact that here we are trying to help refugees, according to the government, by speeding up the process. Does a decision of that nature have an impact on the processing of refugees?

• (1125)

Mr. Nicolas Plourde: I'm going to let my colleague, Mr. Goldberg, answer that. It is a very particular question and he's the expert. I think the question would be better answered if my colleague did so.

Mr. Kevin Lamoureux: Sure.

Mr. Mitchell Goldberg: You are referring to the budget decisions of the government and the impact on the Immigration and Refugee Board. They've had to make severe cutbacks and one of the Immigration and Refugee Board's responses was effectively, as you said, to close the Ottawa office, so that all hearings for the Ottawa regions will be held in Montreal. I'm sure that will cause hardship for many individuals who are living in the Ottawa region and who would have to travel to Montreal or to proceed by video conference, which is very problematic.

Mr. Kevin Lamoureux: I'm thinking in terms of how the government is talking about how this legislation is going to speed up the process.

The Chair: I'll stop the clock. Normally we let you talk about anything you want to talk about, but we're talking about Bill C-31, I would remind you, and I don't think your first question had the remotest connection with Bill C-31.

Mr. Kevin Lamoureux: I appreciate the comment.

The Chair: You can always try, but I just remind you that's what we're talking about.

Mr. Kevin Lamoureux: Yes.

The Chair: Start the clock.

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

I guess I couldn't resist, given the witnesses who are here and believing, ultimately, that the cut will have a negative impact on refugees here and, in particular, Ottawa. Having said that, I will get to—

The Chair: Mr. Lamoureux, you're supposed to stop when I suggest so.

Thank you.

Mr. Kevin Lamoureux: Thank you, Mr. Chair. I appreciate the leniency.

I'm wondering about the whole issue of the charter and detention. Here the current system works. There is no need, I would argue, for us to have mandatory one-year detention. I'm wondering if either witness would be able to comment on whether or not this whole issue of the one-year mandatory detention could be challenged in court, as I suspect it will be, and if they could provide their perspective on that aspect.

Mr. Mitchell Goldberg: I'll do so with pleasure.

It not only might be challenged, it will be challenged. We are very careful when we say something is against the charter. You will notice the language in our submissions most of the time says "possibly against the Charter" because we were trying to be, shall we say, conservative in our submissions, as we're speaking for the Quebec Bar.

When it comes to the one-year warrantless mandatory detention, the Quebec Bar, like other legal experts, agrees not that it might be unconstitutional but that it is unconstitutional. Why do we go so far? It is because the Supreme Court has made that decision in the Charkaoui case in 2006. It's in black and white.

I note that the Canadian Bar Association and the Canadian Association of Refugee Lawyers quoted from that judgment. There is no doubt that one-year mandatory detention without judicial access is an infringement of international law and the Canadian Charter of Rights and Freedoms.

Mr. Kevin Lamoureux: Would you say, and I don't want to lead you in any way, this is something that if the committee allowed it to pass, we would be supporting a law that is virtually unconstitutional?

Mr. Mitchell Goldberg: Every single law that comes before Parliament is supposed to be vetted by the justice department to determine whether it is in conformity with the charter, since we are supposed to have the rule of law in this land.

I would love to see the legal opinion that the government supposedly has indicating that this law is constitutional and, specifically, the detention provisions. I would love to see that opinion. I think a lot of us would love to see that opinion because it's very hard to imagine that a legal expert could say how and why this bill is constitutional.

There are many other parts of this bill that are very questionable as well, but that part is obvious.

Mr. Kevin Lamoureux: You're not a rookie lawyer and the gentleman sitting beside you is the head of the bar association in Quebec. To the very best of your knowledge there is nothing that has ever been made available to you or you have heard nothing in regard

to any sort of a legal opinion that would in fact say that this is constitutional?

Mr. Mitchell Goldberg: From what I understand, the government has to validate each law as being in conformity with the charter. From what I understand, the government has said, yes, we have a legal opinion. The minister has gone around saying it is charter-compliant, but that legal opinion has never been provided, as far as I know, to the opposition parties or any other outside legal experts.

• (1130)

The Chair: Thank you, Mr. Goldberg.

We'll go to Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Chair. This is what happens when one only has seven minutes; you end up having to come back again.

Back to the designated safe country aspect, you mentioned on page 4 that the order does not allow for public debate. You said that it is to be exercised according to ill-defined criteria. Would you mind telling me what ill-defined criteria are?

Mr. Mitchell Goldberg: You're talking about the designated country of origin.

Mr. Rick Dykstra: Yes.

Mr. Mitchell Goldberg: It's interesting to note that in the Balanced Refugee Reform Act the criteria were quite different. They were much more extensive in terms of human rights criteria. What's more, there was to be, in the law that's supposed to go into effect on June 29, an expert panel of human rights experts to advise the government, based on very extensive criteria. Now the criteria have been watered down for some reason, and the government, in this bill, has seen fit to disband that committee of human rights experts.

I note that *The Globe and Mail* has been very critical of that, as have, of course, human rights groups and lawyers groups across the country. It's surprising. I wonder what the government is afraid of, since it is disbanding a group of human rights experts.

I note that in the European community, they have a provision of safe countries of origin, but there is an extremely stringent degree of criteria on human rights standards listed in it. We are all concerned that this provision allows the government to put commercial interests and political interests before lives and human rights.

Mr. Rick Dykstra: I didn't ask you to go on about why you didn't like it. I read in your submission why you didn't like it. I'm trying to get at the point of ill-defined criteria. You didn't answer the question.

I will state, in case you were unaware, that designation, number one, is not automatic. There are quantitative thresholds involved in this. The rejection rate of the country has to be 75% or above. The rate of abandonment of applications has to be above 60%. With respect to those countries that have a low number of claims, we require, before we even go down that road, that they have an independent judicial system and that there is a recognition of basic democratic rights and freedoms.

Before we determine that a country should be designated, a review is triggered in which, number one, CIC, the minister, would conduct a review and consultations with other government departments, a number of whom sat at this table at the beginning of this process. Number two, we actually have in place a number of guidelines that would be followed in terms of the review process.

While you may not agree with the process, it's one that is going to be quicker. It's one that is going to be more transparent and it's going to be more consistent. It will include officials from different government departments at senior levels, including deputy ministers, assistant deputy ministers, and directors who have expertise in this area.

While I would submit that you have the right to disagree with the way Bill C-31 is going to move forward, I don't think you can actually argue that they are ill-defined criteria. It's important to point out that there are criteria set out to move forward.

Throughout your submission you indicate that there is not a right of appeal for those individuals who are determined to be from a designated safe country. I would like you to expand on that, because that's not, in fact, the case.

Mr. Mitchell Goldberg: I'm sorry. You just suggested that there's a right of appeal for people from designated countries of origin.

• (1135)

Mr. Rick Dykstra: Right. I said designated safe countries of origin. You indicated that—

Mr. Mitchell Goldberg: That is false. Subclause 36(1) of Bill C-31 lists seven reasons, under proposed subsection 110(2), that refugee claimants will not get access to the refugee appeal division. Among those seven reasons are designated foreign nationals and people from designated countries of origin. It is there in black and white in subclause 36(1) of C-31. I'm sorry, but that's wrong.

Mr. Rick Dykstra: Actually, no, that's—

Mr. Mitchell Goldberg: If you'll allow me to answer your question—

Mr. Rick Dykstra: Wait. No, I did allow.

Mr. Mitchell Goldberg: You said a couple of things and I wanted to—

Ms. Jinny Jogindera Sims: On a point of order.

The Chair: Excuse me. On a point of order, Ms. Sims.

Ms. Jinny Jogindera Sims: When a witness has been asked a question, we should give them the courtesy to hear the full answer. There were a number of questions I heard in the statements that were being made.

What we are here to do is to hear from our witnesses.

Thank you.

The Chair: That is a valid point of order.

Mr. Dykstra, Mr. Goldberg can finish.

On a point of order, Ms. James.

Stop the clock, please.

Ms. Roxanne James: While I do agree that there was a question, I think that our member, Mr. Dykstra, has the right to counteract what this witness has said, because not everything he has said is necessarily correct. I think for the record that we need to make sure that my colleague on this side has the right within the time limit provided, within the five or seven minutes, to be able to state what is actually correct and the correct facts. I would like to make sure that my point of order is registered and that my colleague has the opportunity to counteract what was said and to state the actual fact.

Thank you.

The Chair: Thank you.

Ms. Jinny Jogindera Sims: On a point of order.

The Chair: Is this on the same issue, or is it another point of order?

Ms. Jinny Jogindera Sims: It is absolutely on the same issue. I agree that each side has the right to put another point of view on the table, but it has to be within the time restraint that we have and not beyond it. It's open to anybody else to put whatever the government side wants to put on the table as well.

The Chair: Start the clock.

Mr. Goldberg, you can finish—

Mr. Ted Opitz: On a point of order, Mr. Chair.

The Chair: This is great. We haven't had one for quite a while.

Mr. Ted Opitz: There is precedent here. The members opposite have oftentimes done that, asked the question saying they didn't have a lot of time, stopped on that line of questioning, and moved to another. The precedent has been set, and Mr. Dykstra should have the same courtesy.

The Chair: I'm going to let Mr. Goldberg finish his answer in a concise manner, sir.

Thank you.

Mr. Mitchell Goldberg: With all these points of orders I would have thought I was at the Quebec Bar right now with other lawyers.

The Chair: We're glad you're here, sir.

Mr. Mitchell Goldberg: Thank you.

The other part of the question I wanted to respond to was the notion of the criteria for the safe countries of origin. It's true that there are some loose criteria about the numbers of people who are accepted. However, it also says "or". The first thing you learn in law school is that when a law says one thing and also says "or" something else, you have to look at both parts. The "or" part here is that if someone is supposedly from a democratic country, they can bypass the criteria you just mentioned. So, if the minister is of the opinion that so-and-so arriving in Canada from Syria is from a safe country, from a democratic country, that minister's opinion is what counts.

I think, for example, there is nothing to stop the minister from saying China is a safe country for commercial reasons, and if people say it's not democratic, then good luck. There is no recourse. There is no judicial recourse.

Mr. Rick Dykstra: Under the current legislation, that's actually also true. The minister can overturn a decision by the IRB if he or she so wishes.

My point is that there is a process that we have looked to implement under Bill C-31. You argued in your submission that it was ill-conceived or ill-defined. I asked why, and you didn't define it; you didn't give me the answer to that. You responded by saying you liked what Bill C-11 had to say.

My point was that your submission suggests that it's ill-defined. I would submit, obviously, that you may not like it, but it's actually very well-defined.

I come back to the point about right of appeal, and categorically—

The Chair: We're over the time, I'm sorry.

Ms. Sims, please go ahead.

Ms. Jinny Jogindera Sims: Thank you very much.

When we're talking about legislation and things that have happened in the past, being a social studies teacher, I always like to talk to students about things we have learned from our past. History is a great teacher, so I want to turn to part of our history.

The minister has stated that we have actually learned from our past mistakes, such as turning away the S.S. *St. Louis* in 1939. That was the boat that was carrying German Jewish refugees.

In light of Bill C-31, do you think we have learned from our history?

• (1140)

Mr. Mitchell Goldberg: No. I think it's important to be who we are. All our parents, grandparents, have come from other countries. I'd like to answer that question as the grandson of Jewish refugees from Europe. I think it's important to ask what would have happened to the German Jews who were on the S.S. *St. Louis* in 1939. You may remember that Canada turned them away during the era of "none is too many", when no Jewish refugees were too many, according to the Mackenzie King government of the day. What would have happened if Bill C-31 had been in effect in 1939? Well, those German-Jewish refugees would have been declared irregular arrivals, because they arrived by boat. They would have been subject to one-year warrantless mandatory detention. If they were recognized as refugees, they would not have been allowed to sponsor their children and their spouses who were in concentration camps in Europe before 1944, by which time the final solution was in full effect. So I do not think we've learned from history.

The Chair: We have to stop the clock.

I have a point of order by Mr. Menegakis.

Mr. Costas Menegakis: Chair, we're discussing Bill C-31. I believe Mr. Goldberg is making a very hypothetical situation about what would have happened, how it would have been interpreted or applied in 1939.

The Chair: I don't know. I think he's answering the question. The question was raised about this—

Mr. Costas Menegakis: I find the question inappropriate.

The Chair: Mr. Menegakis, I think the question was asked about this boat that arrived and tried to get to our shores in 1939, and the comparison was made to the current law. I think it's a relevant question and a relevant answer.

Do you still have more, sir, or are you finished?

Mr. Mitchell Goldberg: I'd just comment, and again as a Jew, and not only as a member of the Quebec Bar, that Canada has apologized for detaining Japanese Canadians. Canada has apologized for the S.S. *St. Louis*. In fact, we now have a commemoration of that. There's a saying that those who do not remember the past are condemned to repeat it. I want to see my country remember the past, not just by making memorials to the past but also by applying the lessons to refugees coming from around the world who need our protection today.

Ms. Jinny Jogindera Sims: Thank you.

Currently, refugees who arrive here do get some access to travel documents. What is the current law relating to the provision of travel documents to refugees? How does the section that denies travel documents to refugees violate our international obligations?

Mr. Mitchell Goldberg: Thank you for the question.

Yes, refugees who are designated not only cannot apply for permanent residence for five years, but they also cannot apply for travel documents for five years, in violation of the 1951 Geneva convention on refugees. In my practice I see many refugees who are desperate to see their family members, who might be in refugee camps in other countries, for example, and I think it's inhumane to deprive them of this simple basic right to have a travel document, to have a right that we take for granted—to be able to travel. I don't think there's any justification for.... Again, we're talking about people who are recognized refugees.

Ms. Jinny Jogindera Sims: In one way, it's a form of detention even after you've left the detention centre after a year, because now you just can't go anywhere, even to meet up with some of your relatives and form some family connections.

Is the mandatory detention of designated foreign nationals contrary to international laws?

Mr. Mitchell Goldberg: Absolutely. As I mentioned, it's contrary to the Canadian charter and it's clearly contrary to international law, to the Geneva convention. The fact that you would treat people differently because of their mode of arrival, that in itself is contrary to international law.

• (1145)

The Chair: Thank you.

Mr. Weston.

Mr. John Weston: Thank you, again, to our guests for being here.

[*Translation*]

I am a member of three bars, but not the Quebec one. It is really difficult.

When we consider rights and responsibilities, there is always a question of balance. It is always our challenge as lawmakers to think of everything we should think of.

[English]

Clearly, you have pointed us to aspects that we have to take into account. In your remarks you have emphasized the area of due process.

Again, I think we face the peril of the false dichotomy. We face the peril of saying there are those who only care about efficiency and cost control and those who only care about human rights. I think that's probably a distortion of what we actually see in this committee, because each member cares about both.

There is a right to appeal. Certainly, you continue to have a right to the Federal Court in Bill C-31, and there is another right to review that. Again, you may deem that to be less robust, Mr. Goldberg, than what you would like, but let us not forget those who are in line. They are people who no one would dispute as being real refugees, people who have come, as the minister said in his testimony, with the scars on their backs, who would otherwise have to wait 21 months on average. Those people now receive an expedited hearing. So we have a program that will process more quickly the people that everybody knows should be processed, without eliminating the others who may not have a claim but at least still have some process in a country that doesn't owe them a legal duty but the moral responsibility that we all care about as Canadians.

I simply want you to look at this from the perspective of preserving the integrity of a system that is under stress, of preserving the democratic support for a refugee program that we cannot afford to lose, of preserving the fiscal ability to support this, which we all care about. As lawyers we tend to look at the due process thing and focus on it to the exclusion of other things.

Mr. Goldberg, as someone who has the benefit of historical analysis, as we both do given our respective heritages, can I ask you to do that and to make sure that you're treating this with the balance that we need to hear to see you and all our other witnesses as credible?

Mr. Mitchell Goldberg: I appreciate the question. It's a fair question. I think you're right that we have to balance several competing interests. You're right that refugees and the Canadian public have the right to expect a fast process, not one that takes two years. That is why all the political parties, including your own, supported the Balanced Refugee Reform Act that would create a system that was fast and fair. The Balanced Refugee Reform Act has very tight deadlines for when a hearing has to be held. There would be an appeal, but a very quick appeal; then if they're refused, they're out. There's a strong consensus, whether you're on the left or on the right, to have a fast and fair system.

You referred to judicial recourses. As mentioned, there are none. There is no appeal on the merits if you're from a list of.... There are seven reasons in subclause 36(2) why there would not be an appeal on the merits.

You mentioned the Federal Court. Unfortunately, there is no stay of removal, no administrative stay of removal for somebody who has been denied by the refugee protection division and goes before the Federal Court. How meaningful, then, is it to have access to a court where you could be booted out of the country before you even get your hearing? That's what I want to say.

I think the Balanced Refugee Reform Act got it right and I think taxpayers would appreciate.... I don't think taxpayers are going to appreciate mandatory one-year detention. I think that's incredibly costly. It's costly financially for taxpayers and it's costly in terms of human psychology, that is, in terms of its impact on the mental health of human beings.

•(1150)

Mr. John Weston: We've discussed the issue of detention—

The Chair: I'm sorry, but you're out of time.

Mr. John Weston: I don't think you're sorry at all, Mr. Chair. You don't sound sorry.

The Chair: No, that's probably right. I don't care.

An hon. member: Oh, oh!

The Chair: Monsieur Giguère.

[Translation]

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): Good morning, sir.

As a member of your bar, I am pleased that I can ask you some questions.

[English]

Mr. Ted Opitz: [Inaudible—Editor]

The Chair: I'm sorry, Mr. Opitz. I apologize. You see, I do care.

Mr. Opitz is next.

Ms. Jinny Jogindera Sims: Chair, I have a point of order. Just for clarification, given that we're debating the contents of the bill with one of our witnesses, I think it's really important for us to clear something up.

We should all know the contents of the legislation we are discussing. This is a point of information, not of argument.

The Chair: Then it's not a point of order. We're going to move to Mr. Opitz.

Ms. Jinny Jogindera Sims: Clause 36—

The Chair: No, I don't care.

Mr. Opitz.

Mr. Ted Opitz: I'm going to pass my time to Mr. Menegakis.

The Chair: Okay.

Mr. Menegakis. Thank you.

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

Thank you, Mr. Opitz, and thank you to our witnesses for appearing before us today.

Mr. Goldberg, from the outset of your presentation to us, you clearly said that you recommended that the bill be withdrawn. You also said that the bill has nothing to do with refugees, if you will, or speeding up the process.

I want to point out a couple of things that I think you perhaps may have missed in making your assessment. With the measures in Bill C-31, the time to finalize a refugee claim for a legitimate refugee would drop from the current 1,038 days to 45 days for claimants from designated countries of origin, and 216 days for all other claimants. Surely you would agree that someone who is fleeing persecution, possible death or torture in their country, would be greatly advantaged by the speeding up of the process for their coming into Canada. I think it points—and we've heard this from other witnesses—to a very compassionate element in the bill.

You mentioned your children. I really thank you for sharing your personal story of your children. I'd like to talk a little bit about some other measures that are in Bill C-31 that will help us to identify a terrorist or a criminal possibly even before they come to our borders. Hopefully, we should be able to identify them. But in the cases where we don't, let's take the two examples of the *Sun Sea* and the *Ocean Lady*.

On the *Sun Sea*, five people were denied, four for security reasons and one for war crimes. On the *Ocean Lady*, 19 were ruled inadmissible for security reasons, and 17 for war crimes. That's a total of 41 people. I'm sure that you and every other Canadian in the country would be appalled at the thought that 41 people who have perpetrated war crimes or have a record of security breaches in their country would be allowed to live in their neighbourhoods, to be around their children and their families.

I'd like to speak a little bit about the issue of biometrics. We heard testimony at this committee from experts, including officials at the highest level, from the RCMP, CSIS, CBSA, law enforcement people, who attested to the fact that biometrics is a 21st-century identification tool. It is a tool designed to assist countries, that is, law enforcement folks, to identify risks or potential risks. Can you elaborate on that? What would your thoughts be on that? It really points to things that are in the bill that very much have to do with refugees and the security of Canadians.

• (1155)

Mr. Mitchell Goldberg: Thank you for your question. There are three comments that I will make.

First, as I said in my previous answer, yes, I agree that speeding up the process is important. My clients are very frustrated and very sad when it takes so long to have a hearing, and they're thinking about their family overseas, whom they want to bring here. They know they can't start the process until they're accepted as a refugee under the current system. They're often desperate to get a hearing quickly, and that's where I think the Balanced Refugee Reform Act got it right.

You said that Bill C-31 is compassionate because it speeds up the process. I think that the Balanced Refugee Reform Act was compassionate. I don't think one year in jail is compassionate to people who aren't even being charged with a crime. The government just doesn't like how they arrived.

To answer the second part of your question—

Mr. Costas Menegakis: I'm sorry. I don't want to interrupt you, but if I may, the word “jail” does not appear in Bill C-31.

The Chair: You have 15 seconds, Mr. Menegakis.

Mr. Mitchell Goldberg: That is what will happen. People outside of Montreal, Toronto, and Vancouver will go to jails with convicted criminals. Even people in Montreal, Toronto, and Vancouver, once the immigration detention centres fill up, will be in jails with convicted criminals. So I think “jail” is appropriate.

The Chair: Thank you, sir.

Mr. Mitchell Goldberg: May I answer the question?

The Chair: Well, it doesn't appear that we're going to let you do that, unless Monsieur Giguère lets you.

It's your five minutes, Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère: My questions deal with the predictability of the law.

This bill opens the door to enormous discretionary power resting in the hands of the minister. The minister can decide on his own what a safe country is, or even whether an arrival is irregular. For example, the minister could decide that a boat with 500 people on board is a regular arrival, but that another boat from another country could be considered an irregular arrival. The minister has the discretion to choose.

The same goes for permanent residence. Deciding that a country has gone from a dangerous one to a safe one would also become a discretionary choice.

The minister could also intervene at any stage to define whether it is possible to grant a right for humanitarian reasons.

Can you tell us what all these discretionary powers could mean for the predictability of the law?

Mr. Mitchell Goldberg: Thank you for that question.

The Quebec Bar is very concerned with these discretionary powers going into the hands of a single minister. We feel that it is unacceptable that a minister can declare an entire country to be safe. Each case has to be considered on its own merits. You cannot say, for example, that Mexico is a safe country because so many people are murdered there each year and women are beaten by their husbands. Maybe some people in Mexico are safe. But others are in danger of being killed or beaten. The situation for homosexuals is one of a number of examples.

The question also arises for designated foreign nationals. In a democracy where the rule of law prevails, it is very important to have automatic regulators, to have checks and balances, to have judiciary power in order to evaluate government decisions.

Mr. Nicolas Plourde: If I may, sir, I would like to finish my answer to your question.

The predictability of the law is a fundamental concept. We were talking earlier about the rule of law. For that to exist, predictability is essential in order to preserve the public's trust in the system. As soon as the public loses that trust, as soon as the predictability disappears, the entire system is threatened.

So, in that sense, you are right to say that predictability is essential.

Mr. Alain Giguère: Thank you very much.

We mentioned comments—

[*English*]

The Chair: I think we're out of time. I'm sorry, Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère: No problem.

[*English*]

The Chair: It's going to take me a second to close here, so thank you.

I want to thank the president, Mr. Goldberg, and Ms. Chamass for coming. I've never heard so many points of order, so you obviously caused some interest, and we appreciate your expertise. Thank you very much for coming.

● (1200)

Mr. Mitchell Goldberg: Thank you very much.

The Chair: I remind members to take all of their relevant papers with them this afternoon. I would leave nothing on your desks. I guess we had some problem yesterday, so please take everything with you.

We will reconvene here at 3:30 this afternoon.

This meeting is adjourned.

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