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Wednesday, September 26, 2012

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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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• (1530)

[*English*]

The Clerk of the Committee (Ms. Julie Lalonde Prud'homme): Honourable members of the committee, I see a quorum.

[*Translation*]

I must inform members that the clerk of the committee can only receive motions for the election of the chair.

The clerk cannot receive other types of motions, entertain points of order or participate in debate.

[*English*]

We can now proceed to the election of the chair. Pursuant to Standing Order 106(2), the chair must be a member of the government party.

I am ready to receive motions for the chair.

Go ahead, Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): After long, considerable thought and debate—

Some hon. members: Oh, oh!

Mr. Rick Dykstra: —we have come to a unanimous conclusion on this side.

I would like to nominate David Tilson as chair.

The Clerk: It has been moved by Mr. Dykstra that Mr. Tilson be elected chair of the committee.

Are there any further motions? I see none.

(Motion agreed to)

The Clerk: I declare the motion carried and Mr. Tilson duly elected chair of the committee.

Some hon. members: Hear, hear!

The Clerk: Before inviting Mr. Tilson to take the chair, if the committee wishes, we will now proceed to the election of the vice-chairs.

Pursuant to Standing Order 106(2), the first vice-chair must be a member of the official opposition.

[*Translation*]

I am now ready to receive motions for the election of the first vice-chair.

[*English*]

Go ahead, Ms. Sitsabaiesan.

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

Madam Clerk, I'd like to nominate Jinny Jogindera Sims as a vice-chair of this committee.

The Clerk: It has been moved by Ms. Sitsabaiesan that Ms. Sims be elected as first vice-chair of the committee.

Are there any further motions? I see none.

Is it the pleasure of the committee to adopt the motion?

(Motion agreed to)

The Clerk: I declare the motion carried and Ms. Sims duly elected first vice-chair of the committee.

Some hon. members: Hear, hear!

[*Translation*]

The Clerk: Pursuant to Standing Order 106(2), the second vice-chair must be a member of an opposition party other than the official opposition.

[*English*]

I am now prepared to receive motions for the second vice-chair.

Go ahead, Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): With pleasure. I nominate Mr. Lamoureux.

The Clerk: It has been moved by Mr. Menegakis that Mr. Lamoureux be elected second vice-chair of the committee.

Is it the pleasure of the committee to adopt the motion?

Mr. Rick Dykstra: Is there anyone else we can nominate?

Some hon. members: Oh, oh!

(Motion agreed to)

The Clerk: I declare the motion carried and Mr. Lamoureux duly elected second vice-chair of the committee.

Some hon. members: Hear, hear!

The Clerk: I now invite Mr. Tilson to take the chair.

•(1535)

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Okay. We're back at it again.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Mr. Chair, I have a point of order.

The Chair: Of course, Ms. Sims.

Ms. Jinny Jogindera Sims: I notice that when I look at our list of witnesses, there is one witness, the Canadian Immigration Report, that gives me a great deal of concern.

I have to say that I didn't know anything about this group before we got the notice for today's meeting, so like any MP in my position, I started to glance over their website. One of the first things I noticed about the website was that there was an article posted that praises Minister Kenney for being the most active and fearless immigration minister in recent history. I guess it is no surprise that the government would have put this name forward to appear at our committee on this study.

I want to be clear that I would normally never object to a government witness. After all, differences of opinion are healthy in a democracy. However, as I looked through this website, I got more and more concerned—appalled, I think would be the correct word. There is a section called “interviews”, in which this organization goes to the American Renaissance Conference and interviews some well-known white supremacist. There is a video of Paul Fromm, a notorious Canadian white supremacist with ties to the KKK, that is actually posted on this website. He says, and I am quoting again,

Certainly the policy in Canada is one of ethnic cleansing and replacement. By 2015, the European founding settler people will be a minority. We will have been...ethnically cleansed out of our own country.

In another video posted on the Canadian Immigration Report website, Tito Perdue says that black people would be more comfortable under segregation, and calls their poverty self-inflicted. I will quote Tito from the website. He says,

If you look at the civilizations that black people alone have created, they generally turn out to be a kind of hell on earth.

There are even more shocking words attributed directly to the witnesses before us. There is a post from the Canadian Immigration Report that seems to defend National Socialism, the ideology of the Nazis. Again, I am quoting.

This hate on for National Socialism is completely misguided...there is nothing inherently wrong with it at all.

I could go on and cite passages that seem to justify white nationalism, or point out an entire section of this website that links crimes to specific racial groups, but frankly, it is disgusting, and I refuse to give those views any more airtime.

Mr. Chair, I am quite shocked that government members have asked this group to testify before us. I would hope that you would agree with me that these views don't have any place at a parliamentary committee in one of the most diverse, open, and accepting countries on earth.

As I said, I could go on and read out a lot more from the website, but I cannot imagine anybody sitting around this table going to that website and then being comfortable having representatives from that group speak to us today.

I am asking for a ruling about whether that particular witness is going to be proceeding to give testimony here today.

The Chair: Oh, it's good to be back in the chair.

Go ahead, Mr. Dykstra.

Mr. Rick Dykstra: It's good that you are in the chair, Mr. Chair.

The Chair: I haven't ruled yet. You never know; you may not like it.

Mr. Rick Dykstra: Well, I would say this much. If Ms. Sims is saying that these witnesses actually believe in what she has just said.... You are questioning the credibility of an individual. If you're saying that the quotes they use for stories they write or that the research they do is fundamental to what they believe.... Is that what you are suggesting?

As far as I know, in Canada you can do interviews with those you don't agree with, often to show how good or stupid those ideas are. If you are suggesting that the individual who is going to be the witness believes what you've just said, you are going to have to provide factual evidence of that to this committee, because you are dragging someone's name through the mud. To take it to that level.... If that's what you want to do, that's fine, but you'd better be damn well sure that you have the right evidence in front of you.

•(1540)

The Chair: Go ahead, Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Mr. Chair, I'm not really 100% confident regarding the process. I know I share many of the concerns that members of the community would have regarding who should or should not be able to appear before committee.

I have trust and faith that when the committee asks me to provide names of individuals, I have a sense of the people and a reason or rationale for choosing that individual or organization before coming to committee. That said, if individuals express concerns after I submit names, I would welcome their input and ultimately determine whether I would like to keep them witnesses that I have personally called to come before the committee.

If the Conservative Party is confident that this individual has something to contribute to the committee, I don't have a problem listening. I'm not going to try to censor who the government calls before the committee, as I hope they wouldn't censor me and the individuals I'm suggesting come before us, whether today or in the future. The concern I have is that the government, now having been made aware of some very serious concerns, be confident about having this person or group appear before the committee.

I put that as a flag that's at least worthy of notice. We might even take a couple minutes' recess so they can reflect on whether they deem it appropriate.

The Chair: Go ahead, Ms. Sims.

Ms. Jinny Jogindera Sims: I would draw members' attention to a website, www.cireport.ca. This isn't going on to look at things second- and third-hand. What we looked at is what is posted on this website. On the Canadian Immigration Report's home page they link to an upcoming documentary called *Multicult T.O.*, which claims Toronto is shifting away from traditional European sources of immigration in favour of the Parkdale gypsies and the Chinese colony in Markham. They go on to make other comments as well.

In an article posted by the Canadian Immigration Report entitled "CIR response to 'Milwaukee Sikh Temple Tragedy: White Supremacism, Nazism & Islam are Same Murderous Ideologies'", they offer a defence of the Nazi National Socialism ideology. They go on to say, "This hate on National Socialism is completely misguided" and "...there is nothing inherently wrong with it at all."

In defence of white nationalism, this is what they write: "White Nationalism' seems to be the more frequently used terminology, which implies a form of ethnic-identity nationalism not unlike Israel, Kosovo or South Sudan. Never have I read of a White Nationalist murdering someone or otherwise engaging in ill behaviour outside their home nation. This again is very different from Islamists, many of whom see the whole planet as a battleground."

Chair, I'm not talking about a link to one article that could be questionable. I will tell you that when I found this last night, I was very upset. Look, we know in Canada we have diverse points of view. I'm not trying to shut down freedom of speech, but what I am questioning is parliamentarians having this person or group—I don't know if it's a person, but I'm talking about a group that has this on its website—as representatives before us today. That's what I'm questioning.

The Chair: Okay. I think we've had a lot of debate from all sides on this point of order. I have listened to the arguments on all sides. I'm going to rule that it is not a point of order. My job is to ensure that the rules of the Standing Orders of this place are maintained. I don't see how this point of order fits in or that this violates the Standing Orders of this committee or, indeed, of the House. I therefore rule that it is not a point of order.

Go ahead, Mr. Lamoureux.

• (1545)

Mr. Kevin Lamoureux: Chair, at this point in time, I would like to move a motion:

The Standing Committee on Citizenship and Immigration requests that a study of the cuts to the Interim Federal Health program commence immediately, and that the witnesses list include, but not be limited to: Canadian Council for Refugees, Canadian Doctors for Refugee Care, Canadian Association of Refugee Lawyers, Canadian Medical Association, Royal College of Physicians and Surgeons of Canada, The College of Family Physicians of Canada, Canadian Association of Social Workers, Canadian Dental Association, Canadian Association of Optometrists, Canadian Nurses Association, Canadian Pharmacists Association, Citizenship and Immigration Deputy Minister Neil Yeates, and officials from the Provincial Ministries of Health from Quebec and Ontario.

The committee also requests that the Department of Citizenship and Immigration provide it with all studies, consultations and briefing notes provided to the Minister with regard to the policy decision to cut interim health care benefits and that this information be provided within five business days and that the Committee report its findings to the House of Commons.

If I can speak to my motion, Mr. Chair—

The Chair: Mr. Lamoureux, the motion is certainly in order. I spoke to you privately and said that I had agreed to put this on the agenda as item number 3, which is on the agenda. It is in order, and it is in order to debate it now, unless someone makes a motion that we return to the regular items on the agenda. If no one makes that motion, Mr. Lamoureux, you may speak.

Go ahead, Madam Groguhé.

[Translation]

Mrs. Sadia Groguhé (Saint-Lambert, NDP): Mr. Chair, in light of what my colleague Jinny Jogindera Sims just told us, obviously...

The Clerk: We are now discussing the motion.

Mrs. Sadia Groguhé: Oh, my apologies. I can come back to this later. It's okay.

[English]

The Chair: We're now with Mr. Lamoureux.

I don't see any motion, so Mr. Lamoureux, you may proceed.

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

I know that members of the committee have received correspondence from different organizations and from health care professional organizations in particular. I have in my hand one dated July 5, 2012, but that is not necessarily the primary reason I bring it forward right now.

More recently, on September 25—

The Chair: Go ahead, Ms. James, on a point of order.

Ms. Roxanne James (Scarborough Centre, CPC): I apologize for interrupting, but when Madame Groguhé was speaking, there was no English interpretation coming through. The buttons were not working until after the fact. Then the English started coming in, and I missed what was originally said and what you're also saying, because I can't hear both at the same time. I'm not sure what Madame Groguhé actually said.

The Chair: I think she withdrew her comments anyway. They had to do with Ms. Sims' point of order.

[Translation]

Mrs. Sadia Groguhé: What I was saying had nothing to do with the motion. So I prefer to stop here.

[English]

Ms. Roxanne James: Thank you. I apologize.

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

Ms. James, I was referring to the motion with regard to the interim federal health program, and I would argue it is critically important that we as a committee deal with this immediately.

I'm sure members have received correspondence and possibly talked to constituents. More importantly, I suspect this issue has been weighing heavily on all our minds as members of the citizenship and immigration committee. I know it has for me personally. The purpose of this amendment is to try to deal with what I believe is a critically important issue affecting the lives and health of a good number of refugees.

We have a letter in support of the motion that was just recently brought forward from the president of the College of Family Physicians of Canada, who was aware that this motion was going to be coming forward and, I believe, wanted to provide encouragement for us as a committee to deal with this letter.

I wanted to be able to share with committee members that numerous organizations have appealed to the committee, indirectly if not directly. I'm talking about the associations in large part that I've listed in the motion, but it also would include, and I would reinforce, the Canadian Association of Optometrists, the Canadian Association of Social Workers, the Canadian Dental Association, the Canadian Medical Association, the Canadian Nurses Association, the Canadian Pharmacists Association, the College of Family Physicians of Canada, and the Royal College of Physicians and Surgeons of Canada.

Literally hundreds if not thousands of other health care workers from across this country—many different stakeholders, very strong advocates, some presenting as professionals—see that what has taken place earlier this year is going to have a very profound impact on many lives. What they really want to see, and I fully support, is for our committee to look at the consequences of the decision that has been made with the idea of coming back to the government with some recommendations as to where we go from here.

I think that as a committee we have the resources to be able to gauge the impact, most importantly by having these professionals contribute presentations before us so we could get an assessment of the impact of the decision. If we do not do that, my fear is we could have cases in which lives would be threatened and we could see an increase in health care expenditures going forward because individuals are not getting the required treatment. There is a valid argument for us as a committee at this point, given our current study is not as time sensitive as this particular policy initiative, that it would be in our best interest and in the best interest ultimately of the refugees we're taking into our country to not only debate this particular motion, but to see this motion passed.

What you'll find, I believe, is wide support outside the committee for our committee to deal with the issue. It's a personal appeal from me. I'm hoping other members of the committee might want to contribute as to why they feel this is an issue we should be debating. Whatever could be done to accommodate it, I'm more than happy to.

Mr. Chairperson, I know you and I have had a discussion with regard to it. After weighing the most recent information that I've been provided, I think this is of the utmost concern for our committee, and we could really do well by looking at it, listening to those presentations, and coming up with some recommendations as to how we can minimize the effect or improve the current policy with regard to providing health services for refugees.

• (1550)

We're talking about, in good part, the most vulnerable individuals in our society.

It's a personal appeal. I'm hoping that members are hearing it and I'd be interested in hearing what your thoughts are on dealing with this today.

The Chair: Thank you, Mr. Lamoureux.

Go ahead, Ms. Sims.

Ms. Jinny Jogindera Sims: I would like to move a motion, if I may.

The Chair: We're dealing with a motion that Mr. Lamoureux has made.

Ms. Jinny Jogindera Sims: I will wait until that has been addressed.

The Chair: Okay.

Is there debate?

All those in favour?

Opposed?

(Motion negated)

The Chair: Go head, Ms. Sims—

Mr. Kevin Lamoureux: Mr. Chair, could I have a recorded vote?

The Chair: You're a tad late, but I'm very generous today following my re-election.

We will have a recorded vote, Madam Clerk.

(Motion negated: nays 6; yeas 5)

The Chair: Ms. Sims, you have the floor.

• (1555)

Ms. Jinny Jogindera Sims: I would like to move a motion that we not hear the witnesses from Canadian Immigration Report today until committee members have had an opportunity to take a look at the site and make an assessment.

The Chair: Is there debate?

Go ahead, Mr. Dykstra.

Mr. Rick Dykstra: What's proposed is a difficult one. We're now getting into the discussion of individuals, and if we're going to do that, I would suggest that we go in camera, because I'm not prepared to debate individuals' backgrounds in public. It's completely unfair to them.

Ms. Jinny Jogindera Sims: I'm talking about an organization, not an individual.

Mr. Rick Dykstra: The organization is run by two individuals who are going to appear here as witnesses. If we're going to get into this, we're going to do it in camera. We can't do it outside.

Ms. Jinny Jogindera Sims: Can I open on my motion?

The Chair: There is a motion to go in camera.

Mr. Menegakis—

A voice: No. No—

The Chair: All those in favour?

(Motion agreed to)

The Chair: It's carried.

We're going to go into in camera for a few moments, ladies and gentlemen.

I don't know how long this will be, but the clerk will come and fetch you when it's over.

Thank you. We'll suspend for a moment.

[Proceedings continue in camera]

• (1555)

(Pause)

• (1620)

[Public proceedings resume]

The Chair: This is the Standing Committee on Citizenship and Immigration, meeting number 50. The orders of the day, pursuant to Standing Order 108(2), are the study "Standing on Guard for Thee: Ensuring that Canada's Immigration System is Secure".

For the record, most people know that representatives of the committee, in the context of this study on security, visited detention centres in Vancouver, Laval, and Rexdale, which were low risk, and also visited one high-risk detention centre.

We also visited the Immigration and Refugee Board. I expect that these issues will be debated in the report when we're ready to present the report to the House of Commons.

We have two witnesses before us today. On video conference from Toronto, we have Mr. Lorne Waldman, who is a partner in Lorne Waldman and Associates.

Good afternoon to you, sir. Sorry to keep you waiting.

• (1625)

Mr. Lorne Waldman (Partner, Lorne Waldman and Associates, As an Individual): Good afternoon.

The Chair: We also have Nathalie Des Rosiers, who is the general counsel of the Canadian Civil Liberties Association. Good afternoon to you.

You each will have up to 10 minutes to make a presentation to the committee, and then committee members will ask questions.

This committee will end at 5:30.

Ms. Des Rosiers, you have the floor.

[Translation]

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

The Canadian Civil Liberties Association wants to thank the committee for inviting us.

I will begin my remarks in French and will then continue in English.

The Canadian Civil Liberties Association is a non-profit, non-partisan organization that was founded in 1964 to protect civil rights and freedoms in Canada. It provides education, representation and intervention programs to decision-making bodies like this one and to courts. It mainly works with volunteers and lawyers across Canada.

My comments will focus on three issues that were raised in response to your report.

I would like to begin by discussing the need to set up an independent accountability regime for the Canada Border Services Agency. I will then talk about the thorny and divisive issue that is the treatment of individuals suspected to have committed war crimes or crimes against humanity. In conclusion, I will quickly go over certain aspects of the security clearance regime.

I want to begin by specifying that the association is always interested in the protection of procedural justice standards with a view to ensuring that people are treated fairly across Canada. The Border Services Agency is being given more and more constraining powers. However, the agency's supervision system is something of an anomaly in Canada. The Canadian Security Intelligence Service and the Royal Canadian Mounted Police have an oversight regime. Of course, I want to highlight the efforts being invested by the government—and this issue has been considered by the House—to improve the RCMP's oversight regime. However, the Border Services Agency has no such regime in place. There is an internal complaint process, but that is insufficient in a context where increasingly constraining powers are being used.

In a democracy, increased powers or discretion should automatically be paired with a certain monitoring oversight. It is important to see that as part of the effort to increase the confidence of Canadians in the border regime.

[English]

I'll come back later with examples to show how necessary this might be, but in short, there is a gap in our accountability framework. CSIS has independent supervision, and the RCMP will have an even better one, but CBSA does not. Many people call us; we have encouraged them to use the internal mechanism for complaints, and it has not been satisfactory.

In our view it would just be part of the regime of increasing powers at the border to ensure that indeed there is some accountability framework. We are not asking for oversight because we suspect foul play or bad form; it's just the right thing to do in a democracy. It's just good governance.

In our view it's not necessary to create a new agency—it wouldn't be very popular to talk about that now—but we might be able to enlarge the mandate of some of the current agencies. I urge you to reflect on this as you move forward in your recommendations.

Secondly, there is the difficult issue of persons suspected of war crimes or crimes against humanity. CCLA, like other human rights organizations, is fully engaged in the fight against impunity. It's absolutely essential that people who may have committed crimes of war or crimes against humanity be brought to justice and tried properly. Similarly, people who are innocent of such crimes should be vindicated and should be cleared.

The obligations of Canada on this score are important, and I urge the committee to engage as parliamentarians and to ask for more information on this context. That will be my pitch to you. I think what CCLA recommends is that we should have a policy to extradite or prosecute people suspected of crime, not simply to deport them. I think that simply deporting them is like passing the buck. It's not owning up to our responsibilities to ensure that crimes against humanity are fully prosecuted.

We certainly want an immigration regime that's good for Canada, and it also has to be good for the world. Every day Canadians around the globe are subject to injustices at the hands of dictatorships, and it's incumbent upon us to make sure that war crimes or crimes against humanity are fully prosecuted.

CCLA will be intervening in the Ezokola case. I know that Mr. Waldman will be there as well. This hopefully will clarify some of the standards of proof that are necessary to exclude someone from the protection of being a refugee because he or she is suspected of war crimes or crimes against humanity. I would urge you to continue to consider the necessity to ensure that there is some fundamental justice in the way in which these decisions are made.

It's a difficult question. There's no doubt that different cases raise different facts. Not everyone can be extradited, because there are places where they won't be tried fairly and places where they would be tortured or suffer persecution, but prosecution should be our duty here. I urge you as parliamentarians to demand reporting mechanisms from the ministry to ensure that the decision not to prosecute or not to extradite and instead to deport is reached only as a last resort and only in the clearest of cases.

In our view there's a lack of transparency here that you may want to explore further in your report. We owe it to the world to carry this responsibility forcefully.

Finally, I'll talk about security clearances and norms of procedural fairness generally.

CCLA has a long tradition of ensuring that. We need to treat people fairly in Canada. That's what we're all about, and we have to continue to do that. I think it's important that we have similar norms of justice no matter who it is that is being treated in Canada. Any time there is a depletion of the justice requirement, I think we should be worried. We should insist that norms of fundamental justice continue to be maintained throughout the system. I urge you to put that as a principle of your recommendations.

Last week we issued a report on police checks. Essentially it was about the way in which many people who are found not guilty have information about withdrawn charges or even the verdict of not guilty being disclosed in the context of police checks for employment in vulnerable sectors and so on. It has prompted lots of calls throughout Canada. We've had many calls. I raise it here because many of the calls were about security clearance. I thought I would share with you some of the stories and the issues that have come up.

•(1630)

[Translation]

Basically, we have come to the conclusion that the security clearance regime must be reviewed. We suggest that the Privacy

Commissioner or another organization be given the mandate to carry out that review, so as to ensure that the information management process is adequate and that there are sufficient processes for correcting information.

•(1635)

People are sometimes victims of poor information management, in a way. However, that seriously affects their ability to work and travel. We think that the correction processes, retention practices and procedural justice standards involved in the security clearance regime must be strengthened and made more transparent for Canadians and those living in Canada.

[English]

We've had several calls, then, about the way in which.... From the consultations we did with the police sector and the security sector, in my view the issue is not so much a question of polarized debate. It's more a question that clarity is needed. There is some ambiguity in the law, and I think it needs to be clarified. Everybody would be better off if they knew better what their obligations were in terms of privacy—

The Chair: We—

Ms. Nathalie Des Rosiers: I will conclude on that.

The Chair: Thank you very much.

Mr. Waldman, it's your turn.

Mr. Lorne Waldman: Thank you very much. I'll try to be brief. I'm going to pick up on a few topics that Ms. Des Rosiers touched on.

First and foremost, I would like to address the issue of the accountability regime. In the Arar report, Commissioner O'Connor recommended many years ago, in 2005 or 2006, that there be oversight of the activities of the Canada Border Services Agency, especially in relation to national security operations. Unfortunately, those recommendations, although government initially said they supported them, haven't been implemented. It highlights a broader problem that my colleague just mentioned. The Border Services Agency has very broad enforcement powers. They have very broad powers of arrest, search and seizure, and detention, and these powers are not subject to any independent oversight by any oversight body.

We often get complaints from clients about the conduct of CBSA officers. The complaints may or may not be well founded, but if there is a serious complaint of misconduct, it's important that there be a mechanism for verifying. In our democracy, where we have the rule of law, that's the only way we can ensure accountability. Really, there is no independent accountability regime vis-à-vis the Canada Border Services Agency, and this is a very serious problem.

I'm now involved in a dispute with the Border Services Agency over their authority to force one of my clients to attend an interview. They insisted, and I'm now going to court. It's the only way I can resolve this dispute, because there is no independent mechanism for arbitrating. It seems an expensive way of trying to determine the limits and scope of authority of the Border Services Agency.

In terms of my friend's comments on war crimes, I'll just pick up on one point.

I agree with the idea that the immigration act has to be enforced, and I also agree with the idea that it's the duty of our government to ensure that people who are wanted and who failed to appear for deportation should be apprehended, but sometimes the methodologies used are counterproductive.

I should say that in the case of the most wanted list for war criminals, that really has produced situations such that people who could have been deported now may not be able to be deported. That's because we live in an age when the publicity that occurs when governments like Canada's make statements is huge, and the Internet makes this information accessible. I'm involved in a case now with one of the persons who was on the list, who is now in a situation in which we have asserted, and an immigration official has agreed, that he would be at risk if he were deported. The idea of a most wanted list publishing the names of people who are wanted for war crimes was ill-conceived. I don't have the same concerns about other types of most wanted lists.

The third issue that I want to speak about briefly, and then I'll stop and leave it open for questions, is the question of detention. I thought that was one of the focuses of today's meeting. I've been doing immigration law longer than I would care to admit—it's been over 25 years—and I've seen the incredible increase in the use of detention by immigration authorities.

Some of that is necessary because we're in a world today where many people are coming to Canada, and it's more difficult to find out who they are. The prevalence of false documentation is higher. Certainly it may be necessary to detain people until we know who they are, because if we don't know who they are, we can't really ascertain whether or not they pose a danger to society.

It may be necessary to detain people who pose a danger to society, but we're seeing detention used in a lot of other circumstances in which people don't pose a danger and we know who they are. This is of particular concern first because of the impact of detention on the individuals.

You visited the Rexdale facility, which is a minimum security facility. I don't know if you had an opportunity of going to the Toronto West Detention Centre, which is a maximum security facility where a lot of the immigration detainees are held. I can tell you it's a very demoralizing, depressing place for a person to be detained, because it's a holding facility for people awaiting pretrial. There are no facilities for any kinds of activities there, and immigration detainees don't get any access to any of the facilities. We have people who are being held in immigration detention for one or two years in conditions like that.

● (1640)

Of even more concern to me is the issue of detention of children. There are children who are being detained, and if you went to Rexdale, I'm sure you saw children there. It's completely unacceptable that children are being detained, and they're not getting any kind of access to services that should be made available to them. I'm very concerned about the impact that detention is having on children who find themselves in detention because their parents are being detained.

I'll stop here. There is a lot more we could say about detention. The one other point I want to make is that detention is extremely expensive, and the government should be considering all of the different alternatives to detention. I've used electronic monitoring as an alternative to detention. We have a bail project in Toronto, an alternative to detention, but it's not being used enough, and it should be used more.

We have to creatively look at different ways to ensure that people who should be under some kind of monitoring are kept under monitoring, but in ways that don't require them to be detained in the immigration facilities because of the expense and because of the impact on the individuals.

That's all I'll say for now. Thank you.

The Chair: Thank you, Mr. Waldman.

Go ahead, Ms. James.

Ms. Roxanne James: Thank you, Mr. Chairman. Congratulations on your appointment as chair once again.

Thank you to both of our guests for your presentations.

I'm going to direct the first part of my questions to Ms. Des Rosiers.

I need to have a bit of clarification on something you said. I think you said you preferred extraditing war criminals to deporting them. Are you saying that if someone who has come to Canada is a war criminal or terrorist or whatever the case may be, and that person has physically left Canada—are you asking us to bring them back to try them here?

I'm not fully understanding that.

Ms. Nathalie Des Rosiers: The obligation is to prosecute people at the place where there are the resources to prosecute them. At times, it could be that you need to send them to the place where they are ready to prosecute them.

It's the reverse of what you're saying. It's not bringing them back, it's bringing them to a place—

Ms. Roxanne James: You're saying if there is a known war criminal or a known terrorist, and we deem that he's here on Canadian soil, you're saying we should try him here for his crimes in another country, as opposed to deporting him back to that country to face charges there?

Ms. Nathalie Des Rosiers: You have both options.

Ms. Roxanne James: Which is the one that you're saying, though? I need to ask because it will lead into another question, so I'm curious to know.

Ms. Nathalie Des Rosiers: I suggested that the government have both options. The idea is that people are presumed innocent. You have to have evidence.

Ms. Roxanne James: Okay, let me just reword it.

If someone was a known terrorist or a convicted war criminal and was outside of Canada, would you bring them back—yes or no?

Ms. Nathalie Des Rosiers: No.

Ms. Roxanne James: If they were here, you'd want to try them before deporting them—yes or no?

Ms. Nathalie Des Rosiers: Yes.

Ms. Roxanne James: Okay. I'm going to lead into a particular case I have in front of me. It has to deal with a gentleman, Mahmoud Mohammad Issa Mohammad, who carried out terrorist acts with the Popular Front for the Liberation of Palestine. Now, this person is in Canada. Are you saying that we should try him here, as opposed to deporting him?

Ms. Nathalie Des Rosiers: There's a difference. Extraditing someone is sending them to another country where they can be tried and charged.

Ms. Roxanne James: If they're here, you're saying we should be trying them on whatever acts of terrorism—

Ms. Nathalie Des Rosiers: If we have the resources to do that—

Ms. Roxanne James: Okay.

His connection to terrorism was established a long time ago. He's still in Canada. He's been here since 1987, and he is continuing to launch judicial appeals. I think you're saying we should try him here for war crimes and then we should allow him to go through all of this judicial review, and so on.

Is that what you're saying we should be doing, or do you not think we should just simply deport this person?

•(1645)

Ms. Nathalie Des Rosiers: I think we have to be clear that we need evidence regarding people, you know? We need to deal with them on the basis of evidence. If you have evidence, then certainly deportation is one possibility. One of the obligations we have, if they have not been convicted, is to prosecute them. That's my understanding.

Ms. Roxanne James: Okay. I just want to get back to this particular case.

His presence in Canada since 1987 and his series of judicial appeals has cost Canadian taxpayers \$3 million. When I learned of this—I'm looking at it—I actually asked if it was a typo. I couldn't believe it myself.

I'm very concerned when I hear witnesses state that we should be trying these particular criminals here in Canada and then allow them to go through judicial appeals. We're talking 1987, and it's now 2012. That's a long time. I'm sure that there isn't a single person watching this committee right now who would agree that this is actually the way to go. I'm very concerned about that.

Getting back to the actual screening policies, I'm wondering what recommendations you would make to correct the flaws in Canada's screening policies. I know you've talked about an independent regime to deal with complaints, but I'm not talking about complaints; I'm talking about how we can better screen people coming into Canada.

Ms. Nathalie Des Rosiers: I think there's the obligation to correct the bad information. The Information and Privacy Commissioner of Ontario recently published an article to recognize how bad information creeps into data. She recommends that people be able to trace where the information comes from to ensure they have the

possibility for correcting it. That's one of the issues. It's important that we ensure we base decisions on correct information.

Ms. Roxanne James: Would you agree that it's better to stop someone from coming into Canada than it is to have them here at a cost to taxpayers of \$3 million? Am I correct?

Ms. Nathalie Des Rosiers: If it's the correct information, I have no problem with it.

Ms. Roxanne James: Thank you.

Second, do you think that so far Canada as a whole, at our border crossings and so on, has done a fairly good job of screening people and preventing criminals from entering our borders?

I read this one example; I know there's a dozen more. Do you think there's room for improvement, that we need to crack down and do better screening? What's your—

Ms. Nathalie Des Rosiers: There's always room for improvement, certainly. That's not the position. I think we have to continue to improve regimes to ensure we have correct information and that we have procedural fairness attached to it so that we are certain we are acting in the best interests. It's not in the interest of anyone if we act on the wrong information.

My point is that *certainement*, there's always room for improvement.

Ms. Roxanne James: You're going back to correcting bad information or making sure we have the correct information, but how do we actually go about that? What is the recommendation to make sure that information is correct?

Ms. Nathalie Des Rosiers: Well, I draw direction from the privacy commissioners, who suggest that people have the ability to challenge information about themselves and to know where it comes from. In that context you need to have some procedural norms around this. I think that's where we're going: ensuring there is a way in which people can respond to the information about them to ensure it is correct.

Ms. Roxanne James: Thank you.

The Chair: Thank you, Ms. James.

Go ahead, Madam Groguhé.

[*Translation*]

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

I would like to begin by thanking our witnesses.

My first question is for Mr. Waldman.

The deportation of certain foreign criminals to their country of origin involves risks of torture and endangers their lives. How do you think deportations should be carried out so that the balance between the imperative of protecting the security of Canadians and the human rights requirements is not broken in a constitutional state like ours?

[*English*]

Mr. Lorne Waldman: Thank you for that question. I think it picks up on the question from the previous speaker.

The case she cited was a case involving a gentleman who had already been convicted. It's a different situation from the situation we're discussing here about people who have been accused of war crimes or crimes against humanity but who haven't yet been convicted. The question is, they may have been found by an immigration member at a very low threshold. Remember, there are three thresholds, and the immigration threshold of proof is less than a balance of probabilities. It's a very low threshold of proof; it wouldn't be enough to find a person guilty.

We are dealing with people who have been found to be war criminals at a very low threshold, and then we have to decide what to do with them. As the previous speaker said, there are circumstances when we should consider trying them in Canada.

I can give you one example, and that was the gentlemen from the most wanted list who was actually deported. He was from Honduras. In fact, Honduran human rights groups contacted people in Canada and said, "Don't send this gentleman home. If he gets home he won't be tried; he'll be free. He is someone who should be tried, and we have evidence to prove that he may well be a war criminal. Please keep him in Canada." That's an example illustrating that if we are committed to holding people accountable, we should seek to try them in Canada.

The other example you gave, of course, is of people who are war criminals and can't be deported, because to deport them would be to risk subjecting them to torture. That's one of the cases I'm dealing with now. In those types of situations we have to consider the possibility, if we believe they really are war criminals, of trying them in Canada.

Of course we have the International Criminal Court, and that gives us another option. If we believe that a person is a war criminal and he can't be sent home because he won't get a fair trial or he'll be tortured in his country, it's possible to ask the International Criminal Court to consider dealing with those cases.

It's a very complex question, and it's not one that has a simple answer.

• (1650)

[Translation]

Mrs. Sadia Groguhé: Thank you.

My second question is for Mr. Waldman, and it's about the notion of accountability.

Obviously, you advocate an independent accountability mechanism for ensuring good governance. Could you elaborate on that, please?

[English]

Mr. Lorne Waldman: I'll be brief.

We need to create an independent regime to which people can make complaints about the conduct of officials of CBSA. It would have powers to conduct hearings and hold inquiries to determine whether there had been abuses of persons' rights.

It is a basic, fundamental right that exists in every other context. CBSA officials have huge powers. There has to be an accountability regime for them as well as for other officials. That is a basic principle

of the rule of law. I'm sure that my friend Ms. Des Rosiers has more to say.

[Translation]

Ms. Nathalie Des Rosiers: Accountability regimes must have the following characteristics: they must be independent and they must have a civilian component. That means that the screening should not be done only by agency employees. Those civilian parties must have the authority to carry out screening. They must be able to conduct investigations not only in response to complaints, but also on their own initiative, to ensure that the policies are complied with and that the law is being respected.

There is a regime for information services, as well as an improving regime for the RCMP. We are simply asking that an equivalent regime be established for the Canada Border Services Agency, as that body has very significant powers.

Mrs. Sadia Groguhé: Okay.

[English]

The Chair: You have about two minutes left.

[Translation]

Mrs. Sadia Groguhé: Mr. Waldman, you said that detention is being used more and more every year. You mentioned the possibility of implementing alternative measures. You brought up various models. Do you recommend any specific model over the others?

[English]

Mr. Lorne Waldman: The issue of detention is complex. It really depends on the reason for the detention.

There are two fundamental reasons we detain people in immigration. One is that we think they may be dangerous because they have a criminal background or a terrorist background, or we may detain them because at the specific moment they come to Canada, we're not sure who they are and we're concerned that they might be dangerous. That is one ground. We have to be very careful in those circumstances.

The other reason we detain people is to ensure that they appear for hearings. In that context, there are fewer concerns. It's really just a matter that if we don't detain them, maybe we're going to have to find them, and there's going to be an expense attached.

The options depend. One of my clients was wrongly accused of being a member of al-Qaeda. He was ultimately cleared after eight years. He was released under electronic monitoring, camera surveillance in his house, and a whole series of conditions.

Other clients who aren't dangerous can be released with some kind of simple weekly reporting. The bail project, which is something I am pretty sure is financed by the government, is a very inexpensive way of ensuring compliance. People register with this project that's funded by the government, and the bail project then acts as an intermediary between the government and CBSA to ensure that people comply with the conditions. If they don't comply, the bail project tells the government, and the people are taken back into detention.

There are different options, depending on the seriousness of the case.

•(1655)

The Chair: Thank you.

Mr. Lamoureux is next.

Mr. Kevin Lamoureux: I have two quick comments. One is for Nathalie. It is with regard to Bill C-43, which I'm sure she's quite familiar with. I'd be very much interested in hearing some of her thoughts in regard to that particular bill. It may not be this afternoon, but maybe we could provide an opportunity to get your understanding of that bill.

Mr. Waldman, to continue with what you just referred to, the bail project and the electronic monitoring are wonderful things. The problem with the bail project is that it only applies in Ontario. Do you think there is something we should be doing in Ottawa to ensure that B.C. and Quebec have similar programs?

You have 100% confidence in the bail project as an alternative to detention, and you see a role for electronic monitoring. Is that correct?

Mr. Lorne Waldman: All of these are alternatives. When I offer my clients a choice of staying in Toronto West Detention Centre or going out under electronic monitoring, they're all going to agree to go out under electronic monitoring. It's not that expensive. It gives the government an opportunity to know where people are if they're concerned they're going to disappear. If they take action to cut the monitoring equipment off, the government gets an immediate warning, is aware they've absconded, and can take action immediately.

It's better than nothing. It's not failproof, for sure. The bail project is another example. For sure we should have the bail project across the country. It's an inexpensive way of finding an alternative to detention, no doubt about it.

The Chair: Mr. Leung, it's your turn, sir.

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

My question is for Mr. Waldman.

Mr. Waldman, my question is fairly straightforward. In the society where we live, where technology is so advanced that now we talk about electronic monitoring and so on, if a person comes in and he's not documented and we don't know who he is—we know how he got in, he flew in—then isn't it the responsibility of us as Canadians, as parliamentarians, to ensure we understand all that information first, through interviews, and questioning, and perhaps our links to Interpol and foreign governments, before we even allow him into the society in general?

I hear that if you let them in, even those on the bail program or on electronic monitoring, it still potentially can be a risk factor for Canadians.

Mr. Lorne Waldman: I agree with you. That's one of the points I made. One of the primary grounds of detention is not knowing the identity of the person. The onus is on the individual to establish his identity. If he doesn't, then he can be kept in detention until he does.

When the people came off the boat, for example—it's a good example—most of them didn't have proper identity documents. They were held for two or three months. By the end of three months,

family members had gotten identity documents that satisfied immigration officials as to who they were. At that point we could move on to see them released.

There is absolutely no doubt that a valid reason to hold someone in detention is not knowing who they are and having a concern, based upon what we suspect, that they may be dangerous. The immigration act already provides for detention on those grounds.

•(1700)

Mr. Chungsen Leung: Don't we also have the right—or perhaps it's not a right—to just turn them around and put them on the next plane back? If they come into this country without proper documentation, it would appear to me they have violated our immigration laws.

Mr. Lorne Waldman: It depends on why they've come and what they say. If we don't know who they are, but they say that they're at risk of persecution if we send them back to where they came from, then we have an obligation under the United Nations refugee convention to consider if their fear is valid or not before we send them back. We don't want to be complicit in sending someone back to be tortured.

If they just say they want to come to visit, they get routinely turned around if we're not satisfied as to who they are. Once they make claims of persecution, we have to adjudicate those before we send them back.

The Chair: Mr. Leung, Ms. Des Rosiers wanted to comment.

Mr. Chungsen Leung: Yes, please.

Ms. Nathalie Des Rosiers: I just wanted to clarify that under the convention on the status of refugees, if somebody's claiming refugee status, the fact that they don't have any papers cannot be held against them, because it may be due to the circumstances of how they left. You have to be a bit careful in just assuming that the failure to provide identification is enough to turn them back. You have to have more than that. Certainly I think we want to comply with the convention. That was my point. It's just a clarification.

Mr. Chungsen Leung: Fine. I appreciate your clarification.

I have trouble with the situation of a person having the documentation to board a plane somewhere and then, when he arrives at our border, all of a sudden not having documentation. To me that signifies some sort of ill intent. During our visit to the various detention centres, we saw cases of that.

What I will say is that if they come in on a boat, like the one that came in, the *MV Sun Sea*, to me that's also people coming in with ill intent, trying to circumvent our system. In that case, I think it is necessary for us to take a little firmer attitude in determining their identity and intent.

Ms. Nathalie Des Rosiers: My point was simply that I think we have to be careful in the way we frame this to make sure that we are complying with—

Mr. Chungsen Leung: If that's the case, how would you suggest we frame it?

Ms. Nathalie Des Rosiers: Well, I think once someone has claimed refugee status, we have the obligation to adjudicate. Their question of credibility, as you point out, is certainly relevant to that, but I think that's....

You need to adjudicate. I think as Lorne said, before you pack them up, you need to adjudicate. My point was simply to clarify that obviously we want to be in compliance with the international conventions.

Mr. Chungsen Leung: *Merci.*

Mr. Chair, how is my time?

The Chair: You have about a minute and a half.

Mr. Chungsen Leung: Oh, it's a minute and half.

As my next question, if a person destroys his identity on an airplane coming back, we now have the ability overseas to know what documentation they have. As they come in, we know they had a passport to get on. They simply destroyed it—ate it or flushed it away. To me, that signifies that there was intent to do something illegal, and that is to enter this country and claim political asylum as a way of getting in and see whether they can drag this process out to stay here.

Again, to me, that appears to signify.... You know, it is hard in a court of law to determine credibility, but it is also the actions they have taken that would make me very suspicious.

Ms. Nathalie Des Rosiers: The actions are relevant to credibility. It's one of the elements that will be looked at.

• (1705)

Mr. Chungsen Leung: Yes.

Okay, those are my questions.

The Chair: Ms. Sitsabaiesan is next.

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

Thank you to both our witnesses.

My first question would be for you, Nathalie, if I may call you that. You were talking a lot about oversight and the need for oversight mechanisms. Can you share some specific incidents in which oversight and oversight mechanisms would have been helpful and may have prevented an incident from occurring?

You also mentioned gaps in accountabilities, and insufficiencies. Perhaps you could provide examples or expand on those, because you touched on them very briefly in your opening.

Ms. Nathalie Des Rosiers: Yes.

It's people who have been treated at the border in a way that would have been inappropriate—they were mishandled, or they suspect or think that they have been the subject of either racial profiling or social profiling—and they have concerns. They call CCLA. They call us and say, “What do I do?”, or they tell us that they witnessed somebody being very inappropriate with somebody else and it ought not to happen.

Generally we tell them to go to the website and fill out the complaint form there. One of the issues that arises is that this is a very internal complaint form, and many times their impression is that

everything is being kind of washed over, that it takes a long time, that nothing is being done to change it. As a result, people who cross the border often will say that it has not improved—

Ms. Rathika Sitsabaiesan: Is the website you mentioned the CBSA website?

Ms. Nathalie Des Rosiers: Yes, it's the CBSA website.

Ms. Rathika Sitsabaiesan: Okay.

Ms. Nathalie Des Rosiers: They have a complaint form that you can fill out.

I think our suggestion is that it's just good governance, good policy, to ensure that if you have extensive powers given to an organization, there is a way in which the regime self-corrects. You have oversight mechanisms. You can indeed have a body—it does not need to be a new body, it could be an expansion—that on occasion will draw attention to a failure to obey procedures. It's helpful to have oversight. It's helpful for people to think that they've been treated fairly and that the process is fair and reasonable, is not from the inside, and has some external validation.

We have crossed that bridge on pretty much all security and policing in Canada, and this is a holdout. There's no reason for it. We should just do it because that's good governance. It's essential. It helps the agency itself and it helps people to have more confidence in it.

Ms. Rathika Sitsabaiesan: In your view, or from your stats, CBSA seems to be the only organization that doesn't have this oversight.

Ms. Nathalie Des Rosiers: Yes. There are varying degrees of oversight. In some there is more civilian oversight; some have fewer powers, some have more. Certainly we have some comments on the best oversight mechanism.

For us, I think it would be important for it not to be only complaints driven, because many people are afraid of complaining about the CBSA. They are afraid that their names will be called up the next time they come up, and then they will have to wait way longer.

The idea is ensuring that indeed there is some good oversight. It is appropriate in this context. We've done it elsewhere. It's good for governance. We should just do it.

Ms. Rathika Sitsabaiesan: Okay, thank you.

We were talking about detention a little bit. I know that I don't have much more time, just one minute, so do you want to talk about some of the alternatives to detention, especially for children?

Ms. Nathalie Des Rosiers: I think the detention of children raises violations of the convention, and it's just not good policy. It may impact their ability to fully adapt to Canada. I think any alternative, bail or any mechanisms that save money and comply.... We just have to be more creative.

We have done that in other sectors. We're doing it in the criminal justice system constantly. It's not perfect, but I think the idea of being innovative in this context by recognizing the need for security as well as the protection of individual rights and the fact that there is a real loss, in detention, in the adaptation of people to Canada, and so on. It's a loss of their lives for years.

•(1710)

Ms. Rathika Sitsabaiesan: When you spoke of children, what would be the ages?

Ms. Nathalie Des Rosiers: Under the Convention on the Rights of the Child, it is 18.

The Chair: Thank you.

Go ahead, Mr. Weston.

[Translation]

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): Thank you, Mr. Chair.

I want to welcome my colleagues from the bar, Mr. Waldman and Ms. Des Rosiers.

Auschwitz survivor Viktor Frankl said that freedom without responsibility is dangerous—meaning that a balance is always required.

I would like to put the following question to someone who is always protecting rights: What is the responsibility of our Minister of Citizenship and Immigration as far as terrorism goes while we are trying to keep our doors open to the world?

I have a question that is perhaps somewhat different for you: What needs to be done for our security?

Mr. Waldman, I will ask you the same question afterwards.

Ms. Nathalie Des Rosiers: Certainly.

All of the Canadian Civil Liberties Association's positions recognize that it is always a matter of reconciling various interests. Of course, protecting the security of Canadians is a key interest.

We believe that security is protected through the law and the respect for the rule of law. Incorrect information doesn't help anyone. We must ensure that the processes are well thought out, that they have accountability guarantees and that they are consistent with the imperatives of protecting both the rights and the security of Canadians.

If I were the minister, the first thing I would do is implement an accountability regime. Such a regime is a source of both information and accountability that will protect rights and the achievement of goals at the same time.

Mr. John Weston: I apologize, but we have very little time.

Mr. Waldman, as a lawyer involved in rights protection, do you have any specific suggestions with regard to terrorism?

[English]

Mr. Lorne Waldman: I deal with a lot of different files. I see the CBSA going after individuals when it makes absolutely no sense to do so, if only because they can.

Quite frankly, I'm profoundly disturbed by the huge amount of wasted resources. I could give you an example of one that just pops into my mind. It was a gentleman from Iran who was a supporter of an organization called the Kurdish Democratic Party of Iran, which is trying to get autonomy for the Kurds in Iran and was opposed to the regime from which we just broke off diplomatic relations, the

Iranian government. Surprisingly, CBSA decided that they wanted to deport this man back to Iran because he supports an organization that is opposed to the Iranian government. Why would we try to do that? The organization has never been accused of involvement in any terrorism activities at all, of any shape, and there was no allegation that he had committed any acts of violence or terrorism.

I'm just saying this because what we see time and time again is CBSA officials going after people just because they can, when there is no rational reason, and expending huge amounts of resources on cases when they shouldn't. There has to be—

Mr. John Weston: Mr. Waldman, thank you for your suggestion. My question was, what would you suggest the minister do?

That organization is in this grey area. It has been rightly or wrongly associated with terrorist activities in the past, and so there may have been unfairness, but we can't get into that individual case.

What would you say to the minister to protect us against terrorism?

Mr. Lorne Waldman: We need to ensure that there is a quality control at the highest levels at CBSA to ensure that people are going after the appropriate cases and not individuals they shouldn't go after.

I see a huge waste of resources. I can assure you that I could sit down with you in a totally non-partisan way and give you 10 examples of cases that are costing the government hundreds of thousands of dollars, and that when you've heard about the cases, you will pull your hair out.

[Translation]

Mr. John Weston: If I were the minister, I would feel that you have not offered much help, as you have not suggested anything specific.

Can I ask the following, Ms. Des Rosiers? As far as visitors go, the Conservative government has accepted more of them than before. There is a 13% increase compared with the 2005 statistics. So, what can we do to continue to invite people, but protect ourselves against terrorism at the same time?

•(1715)

Ms. Nathalie Des Rosiers: I think that protection against terrorism is always a matter of information.

[English]

The security service of Canada, CSIS, is there. I think we continue to invest and ensure they are working to the best of their abilities.

You will not be able to protect against terrorism without some intelligence, some form of knowledge about what's going on. You just need better knowledge, continued vigilance, and continued participation in international law.

There's no solution. You can't close your doors, because we live in a worldwide world. You just keep supporting the mechanisms you have, ensuring that they work well. That's why we're suggesting to improve them by adding accountability around them—

The Chair: Sorry, I'm going to have to close the door.

Mr. Menegakis, unless you want to give your time to.... Go ahead, sir.

[Translation]

Mr. John Weston: No, it's okay.

Thank you.

[English]

Mr. Costas Menegakis: Do you want to finish?

Mr. John Weston: No. Thank you.

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

I want to thank our witnesses for being here with us today and sharing a legal perspective on this thing.

As you may well know, we're currently studying security. It's obvious from your testimony so far that you have a fairly intricate knowledge of our processes and people coming into our country. I want to ask you a few questions in relation to what we're currently doing and perhaps get your feedback on where you think there are some deficiencies or where we can improve.

Can you name some of the specific deficiencies that exist in the measures that we use to identify foreign nationals who may be inadmissible for a variety of reasons, be they health, safety, or security?

Mr. Lorne Waldman: Is that question addressed to me?

Mr. Costas Menegakis: Well, it's to both. Yes, sure, I'll start with you, Mr. Waldman. Maybe you can tell us where there are some deficiencies at the moment.

Mr. Lorne Waldman: As Ms. Des Rosiers said, when we're talking about trying to detect people who may pose a danger for whatever reason, prior to their coming into Canada, there are only two ways to do that.

One is to impose a visitor visa requirement. We would have an opportunity at that point to screen the individual, which would give us an opportunity to check with intelligence agencies, and if we were concerned about their health, we could require them to do a medical.

The difficulty with imposing visitor visa requirements is that it costs a lot of money and impedes our tourism and our ability in terms of people coming into Canada, because we have to be selective. However, if we were to require everyone in the world to get a tourist visa, then we would obviously be able to pre-screen every person coming to Canada.

There's a balance between the cost of doing that and the benefits. Clearly, that would be the most efficient way of protecting our society, but we don't do it because it costs too much money. We don't have the resources. We can't afford to close our doors in that kind of way.

The second way is by improving our intelligence sharing. This issue has been discussed repeatedly. Hopefully, the intelligence agencies have made steps. There are still a lot of steps that need to be made, but we have to ensure that we share intelligence, that we get reliable intelligence from agencies that are reliable.

Those are the two ways in which I think we could improve our methods of ensuring that undesirable people don't get into Canada.

Ms. Nathalie Des Rosiers: In relation to security, we have another committee in which we talk about security, and I think

there's certainly coordination between the two. I think the work being done to ensure the right balance must continue to be done.

Mr. Costas Menegakis: This is our study. This is why you were called here as witnesses, to comment and to give us information that could be valuable in preparing our assessment of the situation and what we would like to do.

One of the things we've been looking at is biometrics. I would like to hear your comments, hopefully from both of you, on whether you think that would be an effective tool in preventing fraud and keeping security threats out of our country. I'm sure you, like the rest of us, would not want security risks in our neighbourhoods, around our families, walking the streets, shopping where we shop, and so forth, so perhaps you could give me your feedback on biometrics.

This time we'll start with you, Ms. Des Rosiers, and then we'll go to Mr. Waldman.

• (1720)

Ms. Nathalie Des Rosiers: Any mechanism to determine people's identity is not in itself wrong. What you have to ensure is that there are some procedural safeguards around it and that you balance the privacy interests of the people and so on. We always want to have accountability. For us, accountability is good governance; due process is good governance. As well, you don't want discrimination, because that's the wrong message.

Mr. Costas Menegakis: Nobody's talking about discrimination.

Ms. Nathalie Des Rosiers: You need to ensure that it's being deployed in a context where you meet accountability needs and you meet good governance and legality requirements. We also think there should be a prior assessment by the privacy commissioners on how to manage the data bank to ensure that it cannot be hacked and that it's being done properly.

That has always been our view: work within a governance and an accountability framework.

Mr. Costas Menegakis: I'm talking about its effectiveness as a tool in identifying who the person is. Let's make the assumption that the legalities.... We can bring all kinds of lawyers here, and I'm sure we'll get the same kind of information coming out, with respect.

Mr. Waldman, would you care to give me your opinion on the effectiveness of biometrics and whether you think it would be a good tool to be used by CBSA, CSIS, and so forth?

Mr. Lorne Waldman: When I started, people weren't even being fingerprinted. More recently people are fingerprinted, and the use of fingerprints has proven to be an effective way of detecting fraud and being able to identify people, so obviously, using biometrics appropriately and in a fashion that respects privacy is not a bad idea.

That said, it would be vitally important, if we're going to start talking about using biometrics, to ensure two things.

One is accountability mechanisms, because without accountability, when you're now further increasing the power of CBSA, it would be extremely dangerous. You would have to also be very careful about how we did it so as to protect privacy concerns, and that would require a detailed and careful consultation with the Privacy Commissioner.

However, it's not a bad idea.

The Chair: Thank you, Mr. Waldman.

Mr. Costas Menegakis: Thank you very much.

The Chair: Go ahead, Madam Groguhé.

[*Translation*]

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

According to a witness, foreign criminals on Canadian territory should be brought to justice either in Canada or in their country of origin.

What do you think about that suggestion, especially when it comes to asylum seekers who have been declared criminals, not based on the standard of proof beyond a reasonable doubt, but rather based on the standard of balance of probabilities as laid out in the idea "if there are reasons to believe" that they have committed crimes? That is very specific.

Ms. Des Rosiers, you also talked about that issue. So perhaps you could both give me some answers.

Ms. Nathalie Des Rosiers: Under the law, that standard is not sufficient to meet the needs of justice in Canada. There is an obligation we should take seriously. Canada is certainly part of a world that does not want war criminals to go unprosecuted. We have an obligation to prosecute, share evidence and ensure that people are brought before the appropriate courts, regardless of whether we are talking about the International Court of Justice, a court in another country or a court in Canada. However, this cloud of insinuation worries us. Finally, we are preventing those people from walking free without really assuming our responsibilities.

In Canada, if allegations are made, they are presented, the person is brought before justice and we wait for the outcome. People may be found guilty or not guilty. We want to be fair. If someone is guilty, they should certainly pay for their crimes. However, if they are not guilty, they should not have to continue having to respond to unproven allegations. That is important for the sense of justice and for our system.

• (1725)

Mrs. Sadia Groguhé: Mr. Waldman, do you have anything to add to this?

[*English*]

Mr. Lorne Waldman: If we're concerned about bringing people to justice, deportation will sometimes be the most ineffective way of doing that. If there is no effective mechanism for trying the person in the country where he is being deported to, a war criminal can get off scot-free by being deported. That has happened in some cases. We have to consider what method is the most appropriate in the circumstances.

[*Translation*]

Mrs. Sadia Groguhé: Thank you.

Unless I am mistaken, both of you talked about more vigorous screening methods before entry to Canada. Could you explain that further?

Ms. Nathalie Des Rosiers: This is also a matter of economics, which is something the committee will have to take into account as

well. The more access to Canada becomes limited, the more Canadian tourism and the Canadian economy will be affected. It is a matter of balance between certain interests.

I think we should continue making evidence-based decisions. We must continue understanding the economic and sociological repercussions of the methods we want to promote so as to ensure that the costs are not actually greater than the benefits. We must also understand that the costs of measures that tend to slow down tourism or arrivals have real consequences in terms of security. That understanding must be ongoing.

I suggest that, for instance, every five years, an assessment of costs and benefits involved be carried out. An enduring responsibility makes something like that possible. It allows us to build knowledge on how the situation is developing.

Mrs. Sadia Groguhé: That's very good.

Mr. Waldman, what do you think?

The Chair: Thank you, the time is up.

[*English*]

Mr. Opitz, you have until the bell rings.

Ms. Des Rosiers and Mr. Waldman, we will all have to leave at 5:30 to go vote.

The floor is yours, Mr. Opitz.

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

I will start with Madam Des Rosiers.

Madam, you talked about some things and suggested some things. You mentioned the overall fairness, appropriateness, and access to courts and adjudication that is happening, and the greater information sharing between not only ourselves and the United States but with other allies, as well as the implementation of biometrics, which are like fingerprints or eye scans and which NEXUS cards do. You see people moving fairly rapidly back and forth because they have that. It sounds very much as though you are satisfied with the direction we are going in being able to accommodate these things, and then of course to accommodate travel to Canada in a more rapid method. Would that be a fair statement?

Ms. Nathalie Des Rosiers: To the extent that there's no accountability mechanism to CBSA, our point is that you should do it. You should really put in your recommendations that any time you increase power, you should increase the accountability regime. It's just good governance.

To the extent that you are getting the privacy commissioners looking fairly at the issue and that you have a good accountability mechanism and adequate fairness, yes, there's no issue. However, the accountability piece must be there, and there must be an audited, evidence-based evaluation.

Mr. Ted Opitz: But that's what evidence sharing and information sharing will do. It will help eliminate any speculation, which is what we don't want to do.

•(1730)

Ms. Nathalie Des Rosiers: But you have to be careful, I think, that indeed it is done with the proper safeguards so that the Maher Arar case does not happen again.

Mr. Ted Opitz: I agree. That's happened with the proper safeguards and proper protocols. We discussed that on this committee for quite some time. That's why the biometrics would be very important. We've had incidents of a criminal, for example, who has been deported from Canada 18 times and returned to Canada 18 times because those systems were not in place to catch him. Whatever the reason, whether it was fraudulent passports put together with fraudulent papers, false refugee claims, or whatever, people get in.

Ms. Nathalie Des Rosiers: There's always a case. No system will be perfect. I think we know that.

We're trying to improve the system. That's why we are saying to invest a little bit on the accountability side, so that you get better intelligence.

The Chair: I'm sorry, Mr. Opitz, but the bells are ringing. I know you can't hear them, but they're ringing.

We will have to adjourn this meeting.

Mr. Waldman and Ms. Des Rosiers, I want to thank you both for taking the time to appear at this committee meeting.

The meeting is adjourned.

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