STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

COMITÉ PERMANENT DE LA CITOYENNETÉ ET DE L'IMMIGRATION

EVIDENCE

[*Recorded by Electronic Apparatus*]

Thursday, April 26, 2001

• 0909

[*English*]

The Chair (Mr. Joe Fontana (London North Centre, Lib.)): Good morning, colleagues.

We've got a fairly packed morning, as you know, between now and twelve o'clock. We have one department with us, so that we can continue our discussions, gain further clarifications, ask questions we might have with regard to the regulations or the legislation in general terms. We will also be hearing some of last witnesses who wanted to be heard in Ottawa before we travel on Monday to Vancouver, Winnipeg, Toronto, and Montreal the following week.

I know there have been some informal discussions. Madeleine wanted to put forward a motion concerning time allocation as it relates to members asking witnesses questions. I've asked her not to put the motion formally to us today, because I think informally there's an agreement we can work with. In other words, I don't want to get into a debate of half an hour or an hour on how we're going to allocate time.

• 0910

This issue of how committees allocate their time is all over the map. Different committees do whatever. We do have a set of guidelines we, as a committee, adopted, but I think in the spirit of cooperation, of hearing as many witnesses as possible, and of getting as many questions in by all the committee members as possible, there is no doubt that the two ten-minute rounds are rather lengthy and cause some difficulties. So I think, informally, what we might do, starting today and on the road on Monday, is adopt a little more flexibility and allow the Alliance the first five-minute round, the Liberal five minutes, and then we would go to the Bloc, the NDP, and the Conservatives, then back to the Alliance and the Liberals.

As you can see, the Liberal side is being very magnanimous in its approach to things. It's our nature to be—

An hon. member: That's the way we are.

The Chair: I know. So let's just try it. Over the past month or two we've worked well together. I think you'll recognize that the chair's been flexible and fair. Let's try it. I don't want to get into a debate, but Inky, you're being as magnanimous as the Liberals, so I'll give you an opportunity just to say a couple of words.

Mr. Inky Mark (Dauphin—Swan River, Canadian Alliance): Here we go again, Mr. Chair. I don't think this is the time to change the schedule in respect of time allocation, because, as you know, this is the very issue that created the problem on travel with this committee. If five minutes is the way we're going to go, I would ask my Bloc colleague to table her motion so we can have the debate, because we're going backwards.

The Chair: But I thought, Inky, you and I informally talked—

Mr. Inky Mark: That is on the road, as opposed to today.

The Chair: Okay. Let's not get hung up about today. We'll start the informal thing at five minutes on the road. Today we'll just keep it as we have it. It's departmental. Everybody has an opportunity.

Joan, we're ready to ask some questions.

[*Translation*]

Ms. Madeleine Dalphond-Guiral (Laval Centre, BQ): I have great respect for our witnesses and I do not want to waste their time. What I am hearing here is quite enlightening.

Mr. Chairman, if you agree, I would really like a show of hands to see what the position of the members around this table is. I agree with your proposal and would have liked the new schedule to apply right away, so that we can see if it works well and if everyone is happy.

[*English*]

The Chair: I understand, Madeleine, but I think every party is trying to be a little flexible. I told you that for the witnesses on our travel we would try it. You also indicated that today we might be able to start. I don't understand what the big deal is about today. We have the department, we have some witnesses. Surely you can be a little more flexible, as the Liberals and the Alliance have been, and start the new five-

minute rounds on the road.

For now, do you think we might be able to get on with listening to the department and the witnesses? I understand that everybody wants to make sure they have the time and opportunity to ask questions. But I'm asking everybody to be a little cooperative. The new interim rules, when we travel, will be based on five-minute rounds, as I've described. But for today, do you think we stick with the exact stuff? Because I'll tell you right now, if we get into your motion, we will have a full debate. We'll take an hour and a half of everybody's time and nothing will change at the end of the day. We'll stick with the same thing, because the votes will be on party lines.

Either we're going to cooperate—we'll do that on the road, and we can get on with the work today—or we can just waste everybody's time in debate about how we should conduct our business. I'm trying to ask you to be a little more flexible. We'll start that on the road, and today we can just get on with hearing the department and the witnesses. I'll make sure that everybody is generous and everybody cooperates.

[*Translation*]

Ms. Madeleine Dalphond-Guiral: Mr. Chairman, I am very generous by nature. People who know me know this. The main issue is the length of time given to the first two parties, ten minutes. Could we not follow the same sequence, but with five minutes only, starting today? That would not be so bad.

[*English*]

The Chair: We're going to change to five-minute rounds, Madeleine, but we're going to do it starting Monday. Do you think today we can just get on with the work? One way of doing it is that perhaps the Alliance and the Liberals might split the first ten minutes and allow two members of theirs and we'll allow two for today.

Mr. John Herron (Fundy—Royal, PC): I have a point of order, Mr. Chair, please. I think I can help you here.

The Chair: I hope so.

Mr. John Herron: Give me just one second.

The Chair: Yes.

• 0915

Mr. John Herron: Mr. Chair, we're okay with that. Thank you.

The Chair: Thank you very much. Good Conservative diplomacy.

Joan, welcome back. I believe you have an opening statement you might get to for the first five or ten minutes, and then we've got some questions on certain aspects, as I indicated, that need clarification, either by the bar or the Canadian Council for Refugees. Maybe we could get started on that basis.

Ms. Joan Atkinson (Assistant Deputy Minister, Policy and Program Development, Citizenship and Immigration Canada): Thank you very much, Mr. Chairman. It's always a pleasure to be back and to be able to carry on with the work we're doing on Bill C-11.

We wanted to take a few minutes this morning, Mr. Chairman, to touch on some of the issues that have been raised by a number of the witnesses who have come in front of the committee and some of the submissions you have received, to talk on some of those issues that are of concern, and to clarify for the committee what our policy intentions are with regard to some of those issues.

The first one you've heard a lot about is the issue of framework legislation, some groups expressing concern about the fact that this bill is framework and there is a lot of detail in the regulation. I want to start off by saying that the concept of framework legislation is not new. In fact, the current Immigration Act, as you know, contains very extensive regulation-making authority, and many of the substantive elements of the program, with relation to family class, selection criteria, the refugee resettlement criteria for refugees selected overseas, and so on, are in the regulation.

The legislative review advisory group appointed in 1997, which started the process of legislative reform, in fact recommended in their report that framework legislation was the way to go. Most modern statutes we are dealing with in Canada are framework legislation, setting out the core principles, rights, and obligations that govern the delivery of the programs. We've certainly talked about that here, where those core principles are in Bill C-11 and how the regulation-making authority fits within those core principles.

I think we've also talked in this committee about how we develop the regulations and our commitment to the committee, all the stakeholders, and our partners to develop our regulations in a very open and consultative manner. We spent some time talking about our regulatory proposals here. That work will continue. As the bill is going through its process, we will continue to consult with the stakeholder groups, with our partners, and with Canadians on the regulatory proposals. And of course, when we are finally ready to have a regulatory package, that regulatory package will be prepublished for a period of time in the *Canada Gazette*, to give Canadians the opportunity to make comments and give us feedback on those regulations. Then the final regulatory package will be put forward once we have finished all of those consultations and Canadians have had an opportunity to let us know what they think.

The Chair: Joan, before you go on to your next point, I think there has been agreement—at least the chair has been in discussions—that when the regulatory package is ready and before it goes for pre-publication, the committee will have a thorough meeting with the department to to go over those regulations. I want to make sure this committee is fully involved not only in the preparation discussions, but also in overseeing some of those regulatory powers. It has been indicated to us that it's possible. I want to make sure you know the committee still wants to be a part of that framework discussion on regulations.

Ms. Joan Atkinson: All right.

As we said before, before tabling Bill C-11, we had the opportunity to respond to some of the concerns expressed after the tabling of the first bill, and we have made some changes to ensure that the key principles we articulated for our policy were clearly articulated in the bill. We've talked about some of these things. We included in the objectives the principle of equality and freedom from discrimination. The equality of English and French, as the two official languages of Canada, was a key principle that we ensured was incorporated into the legislation.

• 0920

Secondly, there has been a transfer of provisions between the act and regulations. We moved some of those important principles, such as the definition of the three major components of the program. This is new in Bill C-11 from the current act. In the current act there is no reference to

family class. In Bill C-11 there is a reference to family class, and we clarified what our intentions were in terms of family class by ensuring that parents were clearly articulated in the bill.

The exemption from excessive medical demand and admissibility moved from what would be in regulation to be being clearly articulated in the bill. The principle that minor children be detained only as a last resort is again a principle that was going to be in regulation that we moved into the bill.

The last point here is that we also ensured that Bill C-11 contained the provisions that clearly articulated the rights of refugees and protected persons and permanent residents.

The new definition of permanent resident, the right of permanent residents to enter Canada, the right to an oral appeal in loss of residency cases, the requirement to have a warrant before an arrest is made for refugees and permanent residents, and status document for refugees were all changes that we made after the previous bill to ensure that our policy intent and the principles that were guiding our policy intentions were clearly articulated.

The second area I want to touch on is the use of the expression "foreign national", because we know that this has raised a lot of comments. A lot of witnesses coming before you have made comments on that.

I think we have to go back, again, to one of our key objectives here in this legislation, which is to make the immigration legislation clearer, more transparent, and simpler for everyone to understand. We want to ensure that we have a piece of legislation that you don't need to have a law degree to understand. We want to make sure that it's open and transparent and clearly understood by all.

The current Immigration Act refers to people who are not Canadian citizens in a variety of different ways. It talks about permanent residents, visitors, and persons who are other than Canadian citizens. What we were looking for was a term that we could use—it would be clearly and simply understood—to refer to people who are not Canadians.

The nature of an immigration act is to impose rules on foreign nationals that are different from the rules that are applicable to citizens in order to clearly delineate the different rights and privileges of citizens and non-citizens.

In most English-speaking countries, when you look at their immigration legislation, you see words like "alien". We didn't want to use that sort of language because we don't think that's consistent with our values—to call people who are not Canadian citizens "aliens".

Expressions like "foreign national", "non-Canadian", "persons other than a Canadian citizen", all serve the purpose of trying to distinguish between Canadians and others. Of those three expressions that I used as examples, we chose the expression "foreign national", because it's clear. We all understand what *étranger* or foreign national means. It means someone who's not a Canadian citizen. It's written in plain language. And it's positive. Using the term "alien" or using the term "non-Canadian" is a negative. We wanted to avoid having terminology that was negative.

In response to some of the concerns with regard to using "foreign national" as a way of referring to permanent residents, as I said before, we have made changes from the previous bill to this bill to ensure that permanent residents, in the hierarchy, if you will, of foreign nationals, are clearly delineated as a specific group of non-Canadians within that category of foreign nationals. They're clearly distinguished from foreign nationals.

There is a definition of permanent resident in the legislation. Throughout the bill, we give permanent residents additional rights over and above those that other foreign nationals have—arrests with warrant, for example, certain inadmissibility provisions that are applicable not to permanent residents but to other foreign nationals, the examination provisions, distinctions between the rights of permanent residents in that context versus other foreign nationals. We believe that in Bill C-11 we are indeed fully recognizing the rights and privileges of permanent residents within that larger group of foreign nationals.

• 0925 

I will move on to some of the enforcement provisions and speak of the rights of permanent residents, because this is another area where you've heard some concerns being expressed.

Some of the concerns refer to the right of permanent residents to enter Canada. I think we need to look at the current act. The current act gives permanent residents the right to enter Canada unless it is established that they are inadmissible.

Bill C-11 guarantees the right of permanent residents to enter Canada once they have demonstrated that they have that status. So if they're a permanent resident and the examining officer is satisfied they are a permanent resident, they have the right to enter Canada. The bill further clarifies the fundamental principle that permanent residents will not lose their status until all appeals are exhausted—very key.

In addition, we have put new provisions in Bill C-11 to further enhance the rights of permanent residents. These provisions allow for the issuance of a travel document to a permanent resident who is outside of Canada not in possession of a valid status document, in order to allow them to get back into Canada if they are still permanent residents—they satisfy the residency obligation—or if they've been outside of Canada for less than a year and are appealing a loss of that status determination. This will facilitate the return of most persons to attend their appeal hearing.

In addition, the Immigration Appeal Division can order a permanent resident to appear before them for their oral hearing, and a facilitation document will be issued, if that occurs, to allow the permanent resident facilitated entry back to Canada.

I should point out that under the current act permanent residents who have been outside of Canada for more than six months and have not satisfied an immigration officer that they did not intend to abandon Canada as their place of permanent residence are given no such facilitation to return to Canada.

So we think that Bill C-11 in fact is more generous in terms of being able to facilitate the right of return for permanent residents.

Finally, of course, in Bill C-11 we return to full oral hearings for all permanent residents who appeal loss of status to the IRB on a decision of a loss of status due to loss of residency.

The second area that has been of concern for some of the witnesses is the removal of long-time permanent residents. We talked a little bit about this the last time we appeared before you. I think we need to clarify, first of all, the claim that some are making that the elimination of appeal rights for permanent residents who are convicted of a serious offence in Canada, for which a term of imprisonment of at least two years has been imposed, will result in the automatic removal of long-term permanent residents without any evaluation of the circumstances of their case. That is simply not true.

A decision to remove a long-term permanent resident, as we talked about, is not one that we take lightly. It is a very serious decision to make. We have built and will continue to build safeguards into the system at the front end of the process to ensure that the circumstances of a person's

situation are fully considered before any decision is taken to take any enforcement action against that individual.

Under the current act, an officer must write a report on all persons who are inadmissible, but may recommend that no enforcement action be taken. In cases of a long-term permanent resident where there has been a serious criminal offence, in cases where no action is taken, what often happens is that the department issues a letter to that individual indicating that they are not taking enforcement action against that individual, but if the individual gets into trouble with the law again, or there are any subsequent convictions, the department may need to look at the case again and make another kind of decision in terms of whether or not to take enforcement action.

• 0930 

Under Bill C-11, the officer investigating the case of a permanent resident with serious criminality has new discretion right at the front end of the process not to write a report recommending that enforcement action be taken. The recommendation about looking at whether or not to consider writing a report is only taken after all the factors have been considered, after all the individual circumstances of the permanent resident have been considered. The length of time in Canada, the presence of family in Canada, the seriousness of the crime, the circumstances surrounding the commission of the offence, and so on, are all factors taken into account before a decision is taken, and will continue to be factors taken into account before a decision is taken.

The minister's delegate who reviews the case, as under the current act, will again consider all the circumstances of the case in determining whether or not to pursue that enforcement action. It is our intention to ensure all the appropriate safeguards will continue to be built into the process, including the level of delegation. I mention that it is the minister's delegate who will review the case and consider whether or not to take it further. That level of delegation will be put at a significant enough level in the organization to ensure that we have all the appropriate checks and balances in the system before taking such a serious decision.

Clearly, in most cases we do not remove long-term permanent residents. But for the protection of Canadians and for the security and safety of Canadians, we must retain the right to remove, in the most egregious of cases, where there is a very serious criminal situation involved.

In Bills C-31 and C-11, we decided to make the threshold for determining that loss of appeal right clearer, more transparent, and easier to understand. In the current legislation, we have a process called the danger opinion. After a determination is made that an individual is a serious criminal and is removable from Canada, we go through a process of deciding whether or not to issue a danger opinion. The minister's delegate makes a decision on whether or not the person poses a danger to Canada. If the danger opinion is issued, that person loses appeal rights.

The danger opinion process has been criticized as being cumbersome, as lacking transparency, and as being unfair. We have therefore replaced the danger opinion process with a clearer, more transparent threshold, that being a conviction punishable by ten years, for which two years or more was actually imposed as the sentence. It's a clear articulation of a definition of serious criminality.

As we talked about the last time, we think the "two years or more" sentence imposed is reflective of the gravity of the circumstances surrounding a defence. If it was not a serious criminal situation, the justice system would not have imposed such a significant sentence. Any suggestion that a relatively less serious criminal offence would remove appeal rights for permanent residence, we think, is not true. Setting that bar at two years or more is an indication of the seriousness that the criminal justice system considers a particular criminal offence.

Finally, as we've talked about before, all serious criminals continue to have access to judicial review, which is judicial oversight of the process and judicial oversight of the decision-making of the department when it comes to removal of long-term permanent residents. While it's true that judicial review is not an appeal—in a judicial review, the court cannot consider the merits of the case and substitute its decision for that of the immigration officer—the court does look at the method and the way in which the decisions were made. The court looks at whether due process, natural justice, and procedural fairness have been followed. In other words, the judicial oversight ensures that permanent residents are not treated arbitrarily, unfairly, or without due process. That's what judicial review is there for. Of course, the charter guarantees this.

We think the balance we have in Bill C-11 is the correct balance between finding ways to protect the safety and security of Canadians and allowing us to remove serious criminals quickly, and ensuring due process and ensuring sensitivity to particular circumstances of individuals before making those decisions.

Finally, examination powers are the final area in which I think you've received a lot of comments and have heard concerns about so-called sweeping powers of arrest and compelled examination. We believe Bill C-11's powers of arrest and examination are designed to be similar to existing provisions. Our intention here, in the area of examination, is to ensure that permanent residents and all other foreign nationals, and the rights they enjoy now under the current act, are maintained through the new legislation.

• 0935 

In terms of examination, as we've talked about before, the concept of examination in Bill C-11 is different from the current act. In the current act, examinations of various kinds are described in different ways in the Immigration Act. We have port-of-entry examinations, we have examinations for the purposes of determining whether someone should be removed, and we have applications abroad. In Bill C-11, we have grouped examinations under one clause, so that all examinations will be dealt with using the same principles throughout the act and the regulations, in clause 15 and clause 16. There is no authority for arbitrary examinations in Bill C-11. An officer must have reasonable grounds to believe that an individual is inadmissible.

Currently, permanent residents who have serious convictions in Canada are frequently requested to attend interviews with an immigration officer in order to allow the immigration officer to ask questions and to review circumstances of the case, and to then make a decision as to whether or not to recommend enforcement action, or, as I talked about before, not to take enforcement action and issue this warning letter. Failure to attend those sorts of interviews will normally result in enforcement action, and we will normally act on the basis of the information that we have available.

In terms of arrest, Bill C-11 provides that foreign nationals who are subject to immigration proceedings may be arrested and detained on the grounds that we currently have in the current act: flight risk, danger to the public, or identity. Of course, as we said before, for refugees or permanent residents, a warrant must be issued before an arrest can be made for those individuals who are subject to immigration proceedings.

Let me move on to detention for identity, which is again an area in which you have heard some concerns. I want to emphasize the fact that Bill C-11 maintains the same grounds for detention that exist within the current Immigration Act: identity, flight risk, or danger to the public. In talking about detention for failure to establish identity, Bill C-11 expands it somewhat to allow us to be able to detain inland, in addition to being able to detain at ports of entry, but the grounds and the reasons for detention remain the same. Again, permanent residents and protected persons are specifically excluded, and they may not be detained for identity purposes.

The current act allows for the continuing detention of a foreign national as long as identity has not been established and the minister is making reasonable efforts to investigate the matter. Bill C-11 introduces an additional safeguard for detention on identity grounds, to ensure that those who cannot establish their identity for reasons beyond their control, and despite reasonable efforts by the minister, will not be detained. So there

are two elements.

We think the detention provisions are reasonable, balanced, and provide an incentive to cooperate, which is key for us in terms of trying to establish the identity of individuals. The provisions respond, we think, to a very legitimate public expectation that persons who are claiming protection from Canada will cooperate in establishing their identity.

Let me move to the overseas leave requirement for judicial review, which again is another area. Some have claimed that the introduction of a leave requirement is an attempt to shield decisions made overseas from judicial oversight. The leave requirement does not unfairly deprive applicants of an independent review of their case. It is a screening mechanism managed by the Federal Court itself, and it ensures that meritorious cases will be granted leave for judicial review.

In addition, introducing the leave requirement for overseas cases equalizes the treatment between immigration applicants within Canada and immigration applicants outside Canada, because, as you know, there is a leave requirement for decisions taken in Canada, but the leave requirement does not currently exist for decisions taken outside Canada. Part of our intention here is to equalize the treatment. However, in recognition of the fact that it is more complicated to get information given the distances involved in overseas application, the bill gives greater flexibility by providing an application period of 60 days, as opposed to 15 days for overseas applications.

• 0940

Finally, before moving on to talk a little about some of the other refugee protection issues, I just want to talk a little about mail seizure, which of course has received some attention recently.

The right of immigration officers to seize packages entering Canada by mail has, as we know, recently been raised by the Privacy Commissioner. I'd like to briefly respond to some of the issues there.

I think we all agree that privacy is important to Canadians and the safety of Canadian society and that we must ensure that privacy continues to be an important social principle. We are all certainly very committed to this. We don't open the mail, although the Canada Customs and Revenue Agency has the authority to open mail. Suspect documents are referred to CIC, which has the authority under the current act to examine and seize documents that are imported to or exported from Canada, but the principle of reasonable grounds is the threshold. Reasonable grounds must exist for us to believe that the documents were used or will be used fraudulently.

Our objective is to ensure that we are protecting Canadian society by removing such documents from circulation. This is one of our tools to ensure that those documents cannot be recycled and used again by smugglers and traffickers to try to bring people into Canada, nor can they be used by those who would attempt to circumvent the rules and attempt to gain entry to Canada fraudulently.

It is an offence under the current Immigration Act to import and export documents such as counterfeit or altered passports. Being able to seize documents and examine them is one of the tools we use to ensure that we can enforce those provisions. Bill C-11 maintains the current powers to seize documents that are fraudulent or that might be used for fraudulent purposes.

I would just point out that we're not the only jurisdiction that has these powers. Other countries have similarly used these sorts of authorities in their legislation to deal with the common issues that many of us have. These are smuggling and trafficking, the fraudulent use of documents, and the use of fraudulent documents so people can try to gain entry into Canada or these other countries.

Finally, let me talk a little about some of the areas under refugee protection—

The Chair: Joan, how much longer do you have to go? I think I have committee members who are dying to ask some questions.

Ms. Joan Atkinson: Three to four minutes.

The Chair: Okay, four minutes.

Ms. Joan Atkinson: All right.

Let me mention eligibility. There have been some concerns expressed about Bill C-11's provisions on eligibility. Some have argued that there should be more specific exceptions to ineligibility, and others have expressed concerns about the claim process and recommended that all claims should be referred to the IRB and that the IRB should determine eligibility within the context of the refugee hearing itself.

Eligibility criteria are very important mechanisms for us to be able to deny serious criminals, security threats, and other persons who are not entitled to protection under the Geneva Convention access to the determination process. It is a key element for us as part of our streamlining measures to ensure that those who are not eligible for protection do not go into the refugee determination system, where they go to the back end of the process, have access to a pre-removal risk assessment that allows consideration of their protection needs and consideration of the safety, security, and national interest of Canada before a removal decision is made. It allows us not only to deal with them more quickly, but it allows us to deal more quickly with those who are in need of protection and who are deserving of protection under the Geneva Convention and other international instruments.

The other issue we've tried to deal with here in Bill C-11 is the issue of repeat claimants. We have currently a situation that has been described in the Federal Court and in other places as a revolving door syndrome, where unsuccessful claimants leave Canada, wait for 90 days in the United States, return to Canada, and start a new refugee claim. We also find the situation where serious criminals are able to remain in Canada by dragging out their refugee claim. This puts the credibility of the whole system into question, places the Canadian public at risk, and slows down the system again so that legitimate refugees who are in need of our protection can't get on with their lives in Canada. The ineligibility provisions are an important tool to prevent this abuse, and the provisions on repeat claimants are also very important tools that will permit us to deal with those issues.

• 0945

Let me talk a bit about the Convention against Torture. Some groups have raised questions or concerns. I think that many groups have been very glad to see that we have incorporated the provisions of the Convention against Torture into the legislation as part of the consolidated decision-making at the Immigration and Refugee Board. However, some want to go further and incorporate into the act article 3 of the convention, which prevents the return of any person to a situation where they would face torture.

We of course are committed to providing protection to those individuals who would probably face torture if they were returned to their country of origin. But another important objective for us is to ensure that serious criminals and security risks who pose a danger to the public are removed from Canada. In order to satisfy our dual mandate of ensuring the safety and security of Canadians and, as a general rule, not exposing dividuals to torture, Bill C-11 provides for the pre-removal risk assessment. This will take into consideration the Convention against Torture criteria relating to the risk of torture on return and examine both the risk to the person and the risk to the safety and security of the Canadian public.

And finally, on the pre-removal risk assessment, some groups have suggested that the pre-removal risk assessment should be conducted by the Immigration and Refugee Board and not CIC. We did carefully consider that option before putting what we have in Bill C-11 forward, and our conclusion was that CIC was the more appropriate decision-maker for a number of reasons.

Currently CIC conducts risk assessments prior to removal, so we have that experience, and we have an initial infrastructure we can build on. The IRB's mandate relates to the examination or risk to a person on return and the need for protection. Their mandate does not extend to include an examination of the risk to Canada or of the public safety or security considerations when they look at those protection decisions.

A pre-removal and risk assessment that is conducted by CIC, on the other hand, allows the minister to take into account individual risk and public safety concerns and also allows for protection decisions to be rendered in a timely manner in conjunction with our removal priorities.

So that's it, Mr. Chairman, in terms of touching on some of the key issues about which we know individuals have expressed some concerns.

The Chair: Okay. Thank you, Joan.

We'll go to questions. Inky, please.

Mr. Inky Mark: Okay, thank you, Mr. Chair, and I'd like to thank our witnesses for appearing before us again today.

I'll keep my comments brief. I have three short questions to ask you, and this will give you more time to respond.

The first question is about the framework legislation and the regulations. I applaud your position on bringing the proposals and the drafts of the regulations back to this committee. I think that's what needs to be done. This committee needs to have the opportunity to look at the regulations.

Would you support a change in the bill to make that very statement, that all new regulations be tabled with the standing committee for its scrutiny? Not that we will or will not have enough influence to change them, but at least we will know the changes that occur in regulations down the road.

Ms. Joan Atkinson: I think that I would go back to my point on the transparency and the openness of the current regulation-making process. We do believe that the way we develop our policies and the way we consult now before we even get to drafting the regulations offers ample opportunity for all interested parties to comment on the policy directions and on those proposals. This happens before we actually draft regulations and before we send those draft regulations for approval by cabinet and for prepublication in the *Canada Gazette*. We believe that our current process for developing regulations is open and transparent and that all interested people can make their comments and views know to us.

Mr. Inky Mark: I thank you for that.

And again, to ensure that the process stays intact for the good of the public, I believe this should be in legislation.

On the issue of permanent residents, your rationale is very good, but the problem is that when people see the words "foreign national" attached to permanent residents, they get mixed messages. This is the criticism we hear. The problem is, when you refer to people with residency status as foreign nationals at any given time after they become residents, they wonder what kind of status they have when they get the status of resident.

• 0950

I have an amendment, which will be tabled, to make the change on the definition side, under subclause 2(1). I'll read it to you and get your evaluation of it:

> "permanent resident" means a legal migrant to Canada who has residence status and who has legal status in and outside of Canada.

That keeps it fairly basic.

Ms. Joan Atkinson: Without responding to the specific wording, we again want to make sure we have very clear language and it's clearly understood. When we talk about words like migrant and immigrant and what not, then we get into what that means, what is "legal", what is "migrant", and so on. The way we've defined it in Bill C-11, you're either a Canadian citizen or you are not a Canadian citizen, and if you're not a Canadian citizen, then you're not a Canadian national, you're a foreign national. Within the foreign national group, a permanent resident is someone who has that status until such time as they lose it, after all the appeals and the process of going through a loss of status determination.

We believe that by clearly articulating that there is a subcomponent of foreign national called permanent resident and a definition of permanent resident, then within Bill C-11 delineating where provisions apply to foreign nationals except permanent residents, we have been able to, we think fairly clearly, articulate the rights and privileges permanent residents have under Bill C-11.

Mr. Inky Mark: You are the people who ensure the system works or doesn't work. Do you think it's time this country started a process of keeping entry and exit data? As you know, this world is becoming smaller. It's going to become a visa-less world, so really we do need to have some account of who is here and who is not here. This idea of having 15,000 warrants for people who should be leaving the country, it's mind-boggling. It's hard to understand how we ever got to that number.

Ms. Joan Atkinson: As we said before, the number of outstanding warrants is not necessarily an indicator of how many people have stayed in Canada and not left when they should have left. Many of those people, we suspect, have already voluntarily left Canada. We shouldn't look at that number and say that's the number of people who are here who shouldn't be here, because that certainly would not be correct.

One of the things we have to look at when we talk about entry and exit controls, borders, and so on, is that part of the strategy we and other countries are developing is to look beyond our borders and try to deal with the issues that give rise to irregular or illegal migration. It makes sense for us in Canada and for other countries that face this problem of trying to manage immigration flows and being able to manage the irregular immigration flows, while at the same time ensuring that those who are in need of protection get the protection, that we can bring in the skilled workers, the family unification cases, the temporary workers, the students, the bona fide business visitors, tourists, and so on. We need to be able to deal with the issue of irregular migration before it gets to our border, as opposed to trying to deal with it at the border through entry and exit controls. This is a direction we certainly are going in with other countries, and other countries are looking at that as a much more effective way to use your resources, trying to deal with these issues before they arrive at your border.

Mr. Inky Mark: I do agree with you on all your points, except that your inference that you are not sure—and just the idea that we're not sure, it's only an opinion—where these 15,000 people are is, I think, another indicator that something has to be done. I agree that we have to work with other countries, that's where the problems lie, but at the same time, we still need to put in place, using technology, some kind of an instant check system at the front door. If they come through the front door, they just create problems internally.

• 0955

Ms. Joan Atkinson: I would also want to reiterate the fact, which has been put on the table here before, that there are 200 million crossings back and forth across our border, and 99% of those visitors are totally compliant. So our challenge here is to be able to identify the most effective way to deal with that 1% of the travellers who are not compliant and cause us problems. We need to be smart in the way we employ our resources to try to deal with the 1% of the population that causes us problems.

Mr. Inky Mark: I have one short question on the issue of deportation and on the topic of due process of law. Should there be a discrepancy between Canadians by choice and Canadians by birth? Should permanent residents who have become Canadian have the right to due process of law, other than judicial oversight?

Ms. Joan Atkinson: I'm not sure I understand your question. Permanent residents who become Canadian citizens of course enjoy all the rights and privileges of Canadian citizenship.

The Chair: And are not removable.

Ms. Joan Atkinson: And are not removable.

Mr. Inky Mark: And are not removable. Well, that's the question. That's the argument, that's the debate.

Ms. Joan Atkinson: There are very exceptional grounds for revocation under the Citizenship Act. But that, of course, is a whole other issue.

The Chair: That's why we know so much about it—we just dealt with that bill

Ms. Joan Atkinson: Indeed.

The Chair: Steve.

Mr. Steve Mahoney (Mississauga West, Lib.): Thank you.

Bear with me on a couple of these. I might seem a little silly, but I'm sitting here, thinking to myself, a landed immigrant is a permanent resident, and a permanent resident is a landed immigrant—nothing else, there's no other definition of permanent resident. You cannot be a permanent resident in Canada unless you're one of two things, a landed immigrant or a Canadian citizen—although the way you read it, you could lose your permanent resident status by becoming a Canadian citizen, which is quite interesting.

Ms. Joan Atkinson: Well, yes, because if you become a Canadian citizen you no longer need, in a sense, permanent residence, because you're now a Canadian with all the rights and benefits that accrue to Canadians.

Mr. Steve Mahoney: But once you're a landed immigrant, you're a permanent resident. There's no other way to describe that.

Ms. Joan Atkinson: We use the term "landed immigrant", but the 1976 act changed from landed immigrant to permanent resident. So permanent resident is the term in the current act.

Mr. Steve Mahoney: But I'm thinking in terms of this issue of foreign national, whether it's not a bit bureaucratic—somebody tried to define some kind of a catch-all phrase here. A refugee applicant is not a permanent resident.

Ms. Joan Atkinson: Correct.

Mr. Steve Mahoney: A determined convention refugee would not be considered a permanent resident.

Ms. Joan Atkinson: Not until such time as they become a permanent resident.

Mr. Steve Mahoney: A visitor is certainly not a permanent resident. And they are all here under specific terms of the legislation, both ours and the Geneva Convention, etc. And that is their status: they are non-permanently residing in our country awaiting determination. And in the case of the visitor, they're here for a specific period of time, after which they hopefully will return. So why don't we just call them landed immigrants?

Ms. Joan Atkinson: Well, I guess if we—

Mr. Steve Mahoney: No. Why don't we just call them landed immigrants? What is this permanent resident stuff? If you're a landed immigrant.... My wife arrived in this country in 1968, became a landed immigrant, and she's pretty permanent—she's been here ever since.

Ms. Joan Atkinson: I'm trying to understand the—

The Chair: You might want to check your status.

Mr. Steve Mahoney: She might from time to time, depending on how things are going.

I'm trying to understand, I really am. I was sitting here listening to this debate this morning, and maybe I'm a little slow, as it's the first time it hit me. Why are we even talking about a term like foreign national? We know what that is—it's a landed immigrant.

• 1000

Ms. Joan Atkinson: But under Bill C-11, it means anyone who is not a Canadian, a refugee claimant, a visitor, a student, a temporary worker, or an accepted refugee.

Mr. Steve Mahoney: But rather than putting landed immigrants into some special category that is almost an omnibus definition of someone who is not a Canadian citizen.... Landed immigrant status is something to celebrate in this country. It's something people literally would die for over past generations, to come here and say "I'm finally a landed immigrant." "No, you're not, you're a foreign national."

Ms. Joan Atkinson: No, you're a permanent resident.

Bill C-11 clearly says you're a permanent resident. Within the big group called foreign national, there is a very important sub-group right at the top—not that there's necessarily a hierarchy, but in the case of permanent residents, there is a hierarchy: permanent residents are at the very top of the hierarchy in terms of foreign nationals. You are a permanent resident, and your status is clearly designated in Bill C-11 as a separate group within foreign nationals. Permanent residents are separate and apart.

Mr. Steve Mahoney: Joan, you know I have tremendous respect for you and your staff; you folks do a fabulous job. But I've got to tell you, this sounds to me like somebody in a back room said "We've got to come up with a way of defining all of this stuff", when in fact they are what they are. They're landed immigrants, or they're refugee applicants, or they're determined refugees, or they're visitors. We might defuse something appearing almost to be silliness by deleting this term "foreign national" and putting in what they really are. They're landed immigrants, in the case of the permanent resident. They're nothing else. The visitors, the convention refugees, or the refugee applicants are not permanent residents.

Ms. Joan Atkinson: Correct.

Mr. Steve Mahoney: They're not. The only person who is a permanent resident in this country is a landed immigrant. Let's call them that in the bill.

Ms. Joan Atkinson: Daniel, you wanted to...?

Mr. Daniel Therrien (General Counsel, Legal Services, Citizenship and Immigration Canada): This may or may not convince you.

You asked what the reason was for the term "foreign national". Joan touched on it when she said it's the nature of an immigration act to distinguish between Canadians and others.

Essentially, there are provisions—the most important being the removal provision—distinguishing between Canadians and non-Canadians. If you're a non-Canadian, including a permanent resident, you're subject to removal in certain specific circumstances. In this clause we have a choice of either saying "foreign nationals who can be removed" or "permanent residents, visitors, refugees", etc., etc.

We felt it was appropriate, for this particular purpose, to group them all under the term "foreign national". The term does not include only permanent residents. It includes these other categories—visitors, refugees, and so on and so forth.

Mr. Steve Mahoney: No, this isn't a problem, because they are what they are. They're visitors, and if they violate the terms of their visitors' visa, they should be removed. And I don't care what you call them. They're visitors and they're leaving.

Refugee applicants or determined refugees, they are what they are.

Mr. Daniel Therrien: At the same time—just to complete my explanation—there is that purpose where it makes some sense. This may or may not convince you to group them under foreign nationals.

For the vast majority of rules, though, permanent residents are distinguished from other foreign nationals and have many more rights.

Mr. Steve Mahoney: Yes, they're landed immigrants.

Mr. Daniel Therrien: The sum total of the act brings permanent residents under this larger group essentially for removal purposes, but distinguishes them for 95% of the rights given under this act.

Mr. Steve Mahoney: To be perfectly honest, I was on side with the idea of foreign national until something hit me in this discussion this morning—why are we even bothering with it?

I have to give it some thought, and I'd like you to do the same. I really believe the term "landed immigrant"—which is what a permanent resident is, nothing more and nothing less than a landed immigrant—is something people are proud to be. They want to continue to be referred to this way, and not be called foreign nationals.

As for the others, I don't care what you call them. Go ahead and call them foreign nationals if you like, but they're either refugees or they're visitors. There are no other categories, other than "illegal migrants", I suppose, and they're illegal migrants. End of story.

It's a bit of a tempest in a teapot we're creating for some perceived necessity within our bureaucracy: we'll create this neat and tidy box so we can say everybody in that box is a foreign national. I don't think it's necessary, but I'll give it some more thought.

• 1005 

I want to deal with the issue of removals, because Daniel mentioned removals and the rights they have. As I understand it, removal of landed immigrants from this country under this bill can only be accomplished if they were charged, tried, and convicted of a crime that came with a potential of a ten-year sentence, and if in fact they were given a sentence in excess of two years within that ten-year envelope. At that point we can deport them back to their country of origin. Is that correct?

Ms. Joan Atkinson: Not exactly. They need to be convicted of a crime punishable by ten years where they were actually sentenced to six months or more.

The two-year rule applies to the loss of appeal rights. So a permanent resident convicted of an offence where they were sentenced to six months or more is liable for removal. If a decision is taken to remove, in most of those cases they would have the right to appeal the decision to the Immigration Appeal Board. Those sentenced to two years or more have no appeal rights, if the decision is taken to remove them.

Mr. Steve Mahoney: So the appeal rights they lose are the ones within the immigration system.

Ms. Joan Atkinson: Correct.

Mr. Steve Mahoney: They certainly would have had full judicial appeal for their court cases and subsequent convictions.

Ms. Joan Atkinson: Absolutely.

Mr. Steve Mahoney: So there is no doubt in Canadian society of their guilt; they have been convicted in a court of law, either by a judge or a jury, and they have been sentenced.

Ms. Joan Atkinson: Correct.

Mr. Steve Mahoney: So in essence, the lawyers are asking for a further appeal, or for us to set aside our concerns about these serious convictions and not deal with deportation as one of the fallouts, if you will, or subsequent actions, taken by the country. But you're saying if it's that serious, and they've had all the appeal rights throughout the process, we're going to boot them out of the country.

Ms. Joan Atkinson: Correct. They've been through the criminal justice system and have had an opportunity to have their case fully aired and heard by the system, appealed, and so on, before the immigration system steps in.

The Chair: Thank you.

Gurmant, these are five-minute rounds.

Mr. Gurmant Grewal (Surrey Central, Canadian Alliance): Okay, thank you, Mr. Chairman.

Joan, I highly appreciate you and your staff giving us the briefing, and the past one as well. It was very helpful.

You mentioned that when a person is applying for various categories, the immigration officer assessing a case must have reasonable grounds to believe a person is a legitimate immigrant. But in practice, when listening to complaints from prospective immigrants or their sponsors back in our constituencies in Canada, I have come across many, many instances when an unreasonable yardstick has been used to try to determine these reasonable grounds. These are not defined. I went through the regulations. I went through the system, but I cannot make myself confident in determining what reasonable grounds are.

I'll give you two examples, not from particular cases, that will articulate what I mean. One particular case in my constituency for spousal sponsorship was refused because the officer didn't determine reasonable grounds of belief that it was a legitimate marriage. The argument was that the wife was a year and a half older than the husband. There were only two points, the other being that the husband had a grade 9 education and the wife had grade 12.

This was not reasonable grounds. And the third point—actually there were three—was that the marriage had actually been in a common place, rather than in a home in India. Traditionally, 25 or 30 years ago when my parents got married, marriages took place at home, but now, with the evolution of culture, with globalization, people are advanced. They are not stuck back where they were 25 years ago. Circumstances change.

When I saw the three-page letter explaining these three things, I was furious. The case was actually denied, the file was closed, and the applicants were asked to appeal. When I looked into Canadian history, Prime Minister Trudeau was 22 years older than his wife. This case was denied because an individual was one and a half years older.

• 1010

So how do you correct these kinds of unreasonable, irresponsible yardsticks? Why are they in the regulations when they determine the reasonable ground?

Ms. Joan Atkinson: Well, obviously, I can't comment on the specifics of the case, because it wouldn't be appropriate and I don't have all the background. But what you're referring to is something that will continue. It's in the current regulations and will be in the new regulations for Bill C-11. That is, in assessing the bona fides of a relationship, the officer must be satisfied that the relationship was not entered into for the purposes simply of gaining admission to Canada and not for the purposes of residing together in a bona fide relationship.

Now, how that decision is made is going to obviously depend on each individual case. Every case is looked at on its own merits. And as you have described, the officers look at the cultural context and the individual circumstances of each of those cases against that cultural context, and they come to a decision on whether or not they believe that marriage was entered into for the purposes of gaining admission or genuinely.

As you pointed out, in the case of family class, if the sponsor believes that the decision was made incorrectly, or that all of the circumstances were not appropriately looked at and considered in the context of the decision, or that there are compelling circumstances, the sponsor has the opportunity to take that case to the Immigration Appeal Board and have that decision appealed.

We've talked about this before. These officers have to weigh all the different circumstances and look at each case on its own merits. They are guided, as always, by the basic principles of due process, procedural fairness, and natural justice. We spend a lot of time and energy training our officers to ensure that they have the appropriate tools and the understanding of natural justice and procedural fairness. We have developed very good training programs, in fact, that we deliver at various of our missions around the world to make sure that our decision-makers have those tools and have that training to allow them to be able to make their decisions fairly.

Mr. Gurmant Grewal: I want to follow up very briefly on what Mr. Mahoney has said.

When the appeal board allows a particular case to be landed, after going through all the lengthy process for the person to become a permanent resident—he has to go through all the loops, security checks, etc.—if the enforcement department then has something that prevented the person to be landed before, and it's a factor again, is there anything in the law that will make sure that once the court has allowed the case to be landed, it will have to be landed, and the person will become an immigrant? If the highest court in the country allows that, can the enforcement still overrule the court's decision? Is that true?

Ms. Joan Atkinson: Well, I think we have to distinguish between the Immigration Appeal Division and the Federal Court and a judicial review. The Immigration Appeal Division of the Immigration and Refugee Board can decide to overturn a decision on law or in equity, either because they believe there was an error in the way the decision was made, or there are humanitarian and compassionate grounds that would indicate that the person should be issued a visa regardless.

Judicial review by the Federal Court, on the other hand, as I talked about before, is not the court substituting its decision for the decision of the visa officer or the immigration officer. The Federal Court reviews the process. In a successful judicial review for the applicant, the Federal Court will say it doesn't think the decision was made fairly and will order it to be made again and often made by another decision-maker—that's often part of the order. The court does not direct that there must be a particular outcome, that the decision must be yes or no. The court will direct that the decision must be made again.

Mr. Gurmant Grewal: Is the answer yes or no?

Mr. Daniel Therrien: I'm sorry, I would direct you to clause 70 of the bill, which says on this point that an immigration officer, after the appeal division of the IRB has determined the case, is bound by the decision of the appeal division. This doesn't mean that there's nothing left to be looked at.

• 1015

In your case, the immigration officer would be bound by the determination of the board that the marriage is a bona fide marriage, so the officer has no choice but to comply with that decision. But there may be other reasons, such as security reasons, that have to be looked at independently.

The Chair: Madeleine.

[*Translation*]

Ms. Madeleine Dalphond-Guiral: Thank you, Mr. Chairman. I would like to quickly follow up on the comments of my colleagues from the Canadian Alliance and Mr. Mahoney from the government party.

It is clear that someone who is living in Canada can either be a Canadian or someone intending to become a citizen or someone who is here temporarily, even if for quite a long period. Therefore, there are permanent residents and temporary residents.

I understand the irritant that the English expression "foreign alien" can represent. It is very natural. Would it not be logical to take out this expression and to use the concept of residence instead? So we could say that there are permanent residents and temporary residents, the latter being either a visitor, or a seasonal worker or a student. It seems to me this would be less frustrating for everyone, everybody would understand and the permanent residents, who already feel somewhat Canadian, would have this status recognized.

So this is my suggestion. I believe that this would be readily accepted by francophones and acceptable to them. I would like to have your comments on this.

Mr. Daniel Therrien: I gave my answer to Mr. Mahoney earlier, whether it was convincing or not. There are provisions that apply to people who are not Canadian citizens. We could call these people different things. There is the generic term "étranger" or "foreign national". Regarding permanent or temporary residents, the words you use, they are already in the bill: "temporary resident", "permanent resident". However, when we deal with removal, if we did not use "foreign national", we would have to list all categories that may be removed, such as permanent residents, temporary residents and illegal residents, because some people are also here illegally. It could be done. This is what we would need to do if we no longer were to use the generic term "étranger" or "foreign national".

Ms. Madeleine Dalphond-Guiral: Regarding the definition of "resident", since you mentioned illegal migrants, it seems quite clear to me, and it would surely be clear to any right-minded person, that a resident is someone who lives in a place like Canada and has the right to be there. This seems obvious. You cannot be a legal resident if you are here illegally.

My second question deals with something you did not mention in your statement but since you are here, I will take this opportunity to ask you about it. On Tuesday last, I think, we heard from the RCMP and those responsible for security. They seemed to say that their role was mainly to gather information at the department's request and to hand it over. With regard to risk assessments before removal, whenever there is something serious enough for the person to be removed, is the officer making the removal decision required to ask the security people to make a risk assessment before removal or is this sometimes not the case?

[*English*]

Ms. Joan Atkinson: I think that in the pre-removal risk assessment, the way we have constructed it under the legislation and the way the process will work is that at the point the person comes before us for the evaluation of their risk and the evaluation of the security considerations and the criminality, we will have the evidence and the information in front of us from the RCMP and from CSIS on what the nature of the criminality and security threat is and so on.

• 1020

It's our role in CIC to balance the protection needs. This is certainly not in the mandate of the RCMP or the CSIS to look at and consider the protection needs of the individual. That's clearly within CIC's mandate: to take information from the RCMP, CSIS, and other sources, look at it, and decide where we come out in terms of the need to protect individuals versus the need to protect Canadian society. We need to look at both sides of it, and it's within CIC's mandate to consider that.

[*Translation*]

Ms. Madeleine Dalphond-Guiral: Am I already at the end of my time, Mr. Chairman?

[*English*]

The Chair: Okay, quickly.

[*Translation*]

Ms. Madeleine Dalphond-Guiral: Thank you.

Do I understand that, in the case of a refugee who has been in the country for four or five years and whom is to be removed, we will go and check in his country of origin if the risk situation has changed? The risks that existed five years ago and those that may exist today can be two different things. Many changes can have taken place in the meanwhile. Having this in mind, is the risk assessment done shortly before the application for removal, say the year before the order?

[*English*]

Ms. Joan Atkinson: If you're speaking of repeat claimants, under the bill they get one opportunity to make a refugee claim and have their protection needs determined by the Immigration and Refugee Board. If they're unsuccessful and leave Canada, then come back and make another refugee claim, they have access to the pre-removal risk assessment. So they will have an opportunity to have their protection needs determined by CIC.

In the previous bill, we said that if unsuccessful refugee claimants left the country and returned, they would not have access to that pre-removal risk assessment process for one year. But some concerns were expressed that a year was a very long time, and that circumstances could change. In recognition of that fact, we narrowed it to a six-month period.

So when individuals have their protection claims rejected, it's because it's been determined—through the full due process of the refugee determination system—that there is no protection need. But if they leave Canada and come back again within six months, they will have access to the pre-removal risk assessment.

I should also point out that we have a refugee resettlement program overseas. If an individual is unsuccessful in the refugee determination process and leaves Canada, then finds himself overseas in a refugee situation or in need of protection, he will, of course, have access to our refugee resettlement program overseas. So there are two avenues.

The Chair: Judy.

Ms. Judy Wasylycia-Leis (Winnipeg North Centre, NDP): Thank you, Mr. Chair.

Since we're getting close to the report stage of the bill, my question is are there any amendments to Bill C-11 that you recommend the minister to bring forward at the committee stage or the report stage? Or are there any amendments you know the minister might be interested in bringing

forward?

Ms. Joan Atkinson: I can't comment on proposed amendments or amendments at this point.

I can say that we have certainly been following all the witnesses' testimony very carefully, as well as all the submissions to you from the interested parties. We've certainly been looking at them with great interest.

Ms. Judy Wasylycia-Leis: You've attempted to address one of the major issues we've heard about during these hearings from various witnesses: the appeal process, and removal or denial of admissibility. You've pointed out that there is a judicial review. But clearly that is on process and not on substance, or not on the circumstances of the case. So is it fair for us to conclude that there is no appeal process for the substantive issues—no review of the criminal circumstances of that individual?

• 1025

Ms. Joan Atkinson: There is no formal appeal to the immigration division or the Federal Court. The judiciary review process, as you correctly stated, is a review of the process. It's to ensure that individuals have been given every opportunity to make their cases and to put all their circumstances on the table and to ensure that those circumstances have been properly considered by the decision-maker.

Under the current act, and in the new act too, an individual can always make a representation or appeal to the minister.

Ms. Judy Wasylycia-Leis: I hear what you're saying, but it still seems, based on the bill, that nothing is proposed to ensure the right to appeal based on circumstances. We've often had cases of someone who did get into trouble with the law, and it was serious, but we need to look at what led to it, the family situation, how long the person has been here, and the isssue of rehabilitation.

Although you say there's the possibility of raising the issue of circumstances, it doesn't seem there's any entrenched mechanism, any statutory requirement to ensure that right of appeal. Is that not a legitimate concern we should address, to be consistent with human rights under the charter?

Ms. Joan Atkinson: Yes. Let me just pick up on human rights.

As we said, obviously everyone in Canada is entitled to the protections of the charter. Any decisions taken under the current or new legislation, including decisions about removal of long-term permanent residents, are subject to the scrutiny of the courts to ensure that they're in accordance with the charter.

So I think we need to look both at our record, and at how we currently do it. Under the current act, when a danger opinion has been issued, serious criminals do not have access to a formal appeal.

In terms of statistics, when we look at the reports on permanent residents who have been here since a very young age, about forty of those reports are written every year, and only five will actually proceed to a full enforcement action when we go for removal. Those are only in the most egregious of cases, and we consider all the personal circumstances of the individual.

Ms. Judy Wasylycia-Leis: So then why not ensure the right of appeal? I think that's the question.

The Chair: Yolande.

[*Translation*]

Ms. Yolande Thibeault (Saint-Lambert, Lib.): Thank you, Mr. Chairman.

Madam, when you discussed the language issue raised by the words "foreign national", an alarm light lit up in my mind, which may not be a red light, but certainly a yellow light. I did not see an issue in French. The connotation of the word "étranger" is not quite the same and the word is not so much of a problem. However, having reflected on it, I can see it must be frustrating for permanent residents who have been here for many years to still be called foreigners.

I think that putting our permanent residents in a subcategory of a general class of foreign nationals diminishes enormously the importance of this status. This is just a comment. I am not asking you to answer because I have other questions which have not yet been raised.

I want to talk about refugees who have been here for 8, 10 or 12 years without ever having their status resolved. It happens. There are some in my riding and I find this situation totally unacceptable. We heard from the RCMP earlier this week.

I wonder if we could not set a deadline to make sure that an investigation cannot last more than five years, for example. If, after a set number of years, the officers who collect all this information have not been able to find incriminating evidence against these people, well, one of two things should happen. If there are still doubts, they should be removed, or else, they should be allowed to stay. It is absolutely incredible that such situations could exist in our country.

• 1030

Here is my last question. To this one, I would like an answer.

At an earlier meeting some of my colleagues and myself asked questions about the new selection grid. You told us you would get back to us on this. Can you tell us something in this regard today?

[*English*]

Ms. Joan Atkinson: Let me talk about the cases you referred to, which we often call the "limbo cases"—ones that are left for a long time without resolution of their status. We certainly try to minimize the number of such cases, because we clearly recognize how extremely difficult it is for those people and their families to get on with their lives.

We hope the changes we're making—having the security screening at the front end of the process, when individuals first arrive in Canada and make refugee claims—will reduce the number of cases that end up in limbo.

Part of our problem now is that no security screening is done at the front end of the process, when people arrive. They go into the refugee determination system, and only after they've been through it—which, as you know, can last several months or longer—can we actually start the process of determining identities and doing the security screening.

We hope that by moving that process to the front end, we will be able to do the background checks much more quickly, and determine whether

people meet the security requirements.

The other thing we've done in Bill C-11, as you know, is amend clause 31. In it, we talk about issuing status documents to accepted refugees and protected persons, even though they are not yet permanent residents, and it may be some time before they obtain that status. But we recognize that it's very important for these individuals to have some indication of their accepted refugee status in Canada, which will allow them to work, study, and so on. In addition, this will allow them to get convention refugee travel documents to allow them to travel back and forth.

With those two changes we're making in Bill C-11, and the way we implement them, we hope we'll be able to reduce the number of cases that are left in limbo for so long.

The Chair: I think she also asked about the point system.

Ms. Yolande Thibeault: Yes.

The Chair: You see, I am listening. It might not appear that way, but I am listening to the questions and the answers.

Ms. Joan Atkinson: Your specific question on the point system?

Ms. Yolande Thibeault: My question was why did you remove the ten points that agents overseas were allowed to give?

The Chair: The suitability.

[*Translation*]

Ms. Yolande Thibeault: The discretionary points.

[*English*]

Ms. Joan Atkinson: In terms of the point system, we have tried to move to a system that is still transparent, clear, easy to understand, and easy to administer. At the same time, it should retain the flexibility for individual visa officers to exercise their discretion when they feel that an individual's points don't accurately reflect his chances of establishing himself successfully.

We've therefore replaced the ten points for suitability with a new feature in the selection grid, which we call the adaptability factor. There is a menu of choices for visa officers to choose from. They might, for instance, look specifically at the individual's previous time spent in Canada as a temporary worker or student. As well, the attributes of the spouse or partner, such as level of education or language skills, the presence of relatives in Canada, whether the individual has an informal job offer—those will all count for something.

• 1035 

This system will allow the visa officer to choose from a number of different factors to look at, and award points accordingly. So as I said, the system will retain the visa officers' current discretionary authority. It will retain the current discretionary authority to allow the visa officer, even though the points may not add up to the total that is required—or perhaps the points do add up to the total that is required, and the visa officer feels the points don't accurately reflect the case—still to approve the case, with the consent of a senior immigration officer. So there will have to be the manager overseeing that.

Ms. Yolande Thibeault: If a person has only 71 points, for instance, the visa officers could say yes, we agree the full points are not there, but...and look for a reason.

The Chair: It's time for final questions. Steve.

Mr. Steve Mahoney: I wanted to ask, following up on that, if we could get some examples of the grid system.

The Chair: Page 11 in the proposed regulations.

Ms. Joan Atkinson: In the proposed regulations, Mr. Mahoney.

The Chair: I think we asked for a further clarification of how Canada's point system might stack up against other countries on this whole competitiveness issue, and I know you've given us that. Believe me, we have more paper than we know what to do with, but it's all here. We're just going to take time to digest it, but thank you for that.

Mr. Steve Mahoney: There is a reason I wanted that too. I'd like you to consider the possibility, in conjunction with this bill, of our declaring an amnesty period for people who are in this country perhaps illegally, allowing them to come forward to qualify for landed status under the point system. They're here in the thousands, and most of them work illegally in the construction industry. All the money they're paid is underground, and they don't pay taxes, for obvious reasons. I'm wondering if we could look at an amnesty to allow those people to come forward. The big concern they have is the education requirement, for either themselves or their spouses. I'd like to see a separate report on that.

The Chair: We're going to give you a week and a half to think about that while we're on the road travelling.

Mr. Steve Mahoney: Perfect.

The Chair: Thank you for that.

Before we shut down this part of it, may I ask a couple of questions?

I'm going to seriously ask you, while we're away for a week and a half and you probably won't be able to get to us, to use your creative hats with regard to this foreign national and permanent resident thing. I've heard it from everybody now, all parties. We have some problems with this, so I'm going to tell you, sit down, think about it. You haven't convinced many people that we ought to have this new definition of what a Canadian is. Permanent, temporary—I'm telling you, it's in trouble, so think about it for a while.

Second, with regard to long-time permanent residents and the removal criteria, I know you've given us your policy intent very well and I know it's a complicated one and was asked about by a lot of the members this morning, but I'm not sure it's very clear even now. What might you suggest, because the legislative counsel isn't here? Perhaps the committee could ask our people to look at how we might clarify that particular aspect of the bill with regard to permanent residents and removal. I think I've heard the policy intent, I'm just not sure that what's presently here really nails it down and clarifies it. Could you tell me what clarifications might need to be there, so we can make it clearer, based on the testimony we've heard and the questions asked by the committee members?

Ms. Joan Atkinson: Would it be useful, Mr. Chairman, to have a flow chart that describes the steps involved in a decision to remove, where there are appeal rights, where there are not appeal rights, where the decision points are, if you will?

The Chair: If you could do that and if you could get it to us before we leave on Monday morning, that would be very nice, because I'm sure this question will come up and the committee members might want it before we start our western trek.

Ms. Joan Atkinson: Okay.

The Chair: Finally, with regard to refugees, I know a number of people suggested, and I think the committee members also asked, if we were setting up a criminality check at the front end, and we then determined that a person is a legitimate refugee, why couldn't we land them very quickly, as opposed to forcing them through this maze of, again, the landed criteria, and so on and so forth? Is there a possibility of doing that? I understood you to say a week or so ago, Joan, it might be possible to look at how we could expedite this. Yolande and others have asked. These refugees are in limbo until such time as somebody.... Is there a possibility that you look at that? That's not as urgent. We can wait until we get back for that.

• 1040

Ms. Joan Atkinson: It certainly is our objective, by having the security screening at the front end, that hopefully, in the vast majority of cases, by the time the individuals go through the refugee determination process they will be ready to land because they will have met all of the security requirements and the requirements for landing. That is certainly part of our objectives.

The Chair: I think Gurmant was essentially asking some of the same questions there.

Thank you very much all of your for your very hard work, for giving us all this information and the clarifications, based on what we've heard to date. I'm sure that we'll have some more questions when we get back from Vancouver, Winnipeg, Toronto, and Montreal, when we get into more substantive discussions. We intend to have you back after that, before we get into clause-by-clause discussions, to see whether or not there are opportunities and whether or not we've come up with some good ideas while we've been away and while you have too. Then collectively we can get on to the clause-by-clause.

Thanks very much to you, Joan, and to all your colleagues for some very hard work and some very good informative sessions.

We'll take two minutes for coffee, and then we'll get our other witnesses here.

• 1041

• 1048

The Chair: Order.

We'll continue with our witnesses. We have this morning the Shipping Federation of Canada, Gilles Bélanger; the Chamber of Shipping of British Columbia, Ron Cartwright; the Canadian Bureau for International Education, Claudette Fortier and Jennifer Humphries; the Canadian Labour Congress; and REAL Women of Canada, Diane Watts.

We would ask each of the groups to give us five to seven minutes. Rather than reading your briefs—some of us have had and taken a look at them—just give us an overview of what the brief says, along with any suggestions and recommendations you have to the committee with regard to the legislation, so that we can ask you some questions.

We'll start off with the Shipping Federation. Gilles, welcome.

Mr. Gilles J. Bélanger (President, Shipping Federation of Canada): Thank you, Mr. Chairman.

[*Translation*]

Good morning, Honourable members of the Standing Committee on Citizenship and Immigration. My name is Gilles Bélanger. I am President of the Shipping Federation of Canada. I am accompanied by my colleague, Ms. Anne Legars, Legal Counsel and Director, Policies and Government Affairs, whom I may call upon to help me answer your questions.

[*English*]

As this presentation will be delivered in both languages, I apologize for forcing you to put on your hearing gear. Anyway, I'll go on in both languages as we proceed.

• 1050

The federation represents over 95% of ocean vessels, including international cruise vessels, trading internationally to and from ports in Atlantic Canada, the St. Lawrence River, and the Great Lakes. Our membership consists of shipowners or ship operators and their Canadian agents. These ship agents have been and will remain considered as transportation companies for the purposes of the Immigration Act, with all the corresponding duties and liabilities arising from the act.

[*Translation*]

Up until now, the involvement of the Federation in immigration matters was essentially linked to the phenomenon of undocumented individuals arriving in Canada as stowaways or deserters. We appeared before the committee to comment on this matter in February 2000.

During our presentation, we drew attention to the risks associated with the presence on a ship of stowaways or deserters for the vessel, the crew and the environment, but also for the stowaways themselves.

We made specific recommendations aimed at discouraging potential stowaways from embarking on such a journey. The committee supported most of our recommendations in its March 2000 report.

The coroner's report on the death of three Romanian stowaways sadly confirmed our fears. The delays and roundabout methods put in place by the Immigration Act as well as the weaknesses of the deportation process are well-known outside Canada and serve as incentives for people to

risk the voyage.

We were therefore somewhat disappointed to see, upon reading the bill, that it only partially integrates your committee's recommendations.

Our recommendations relating to part 2 of the bill are specifically aimed at underscoring the need to speed up the processing of claims, to render more effective the provisions relating to removal to safe third countries and to facilitate the expulsion of those persons who are refused refugee status.

[*English*]

Moreover, part 3 of the bill, concerning enforcement, brings new concerns to the federation, especially in regard to the new drafting of the transportation companies' duties and liabilities. As we read it, subclause 148(1) introduces the new obligation not to carry to Canada a person who does not hold a prescribed document, with corresponding criminal and financial liability.

Human smuggling is prohibited and punished under the current act. However, good faith carriers who bring to Canada passengers who are not properly documented are liable for the repatriation of these passengers, but are not currently criminally liable, which is a change with the present bill. Clause 117 of Bill C-11 already deals with human smuggling, when a person knowingly organizes the coming to Canada of undocumented individuals.

We submit that paragraph 148(1)(a) would be unfair for ships with stowaways on board, as well as for international cruise ships, which keep on board passengers who are not allowed to land for excursions ashore. As an example, under clause 148 an agent could be imprisoned because the ship he represents carried a stowaway or other undocumented passenger. We submit that this clause goes too far in that regard.

• 1055

We also strongly oppose the new obligation to arrange medical examinations and be responsible for medical costs incurred by passengers who have the right to come and stay in Canada. I'm not talking about stowaways or deserters in this case. I'm talking about passengers who are visiting Canada on a cruise ship.

We strongly believe such a provision to be unconstitutional. It would be very unfair to the international cruise ship industry and would act as a disincentive for international cruise lines to call to Canadian ports. We fail to understand the rationale for this provision, especially since we're not aware of the existence of collection problems for medical services delivered to international cruise passengers.

According to information and formal discussions with immigration's transport unit, the intent was not to introduce new liability. However, the present drafting does actually introduce new liabilities, and we strongly urge this committee to consider these issues and to revisit paragraphs 148(1)(a) and (c) accordingly.

We also urge the committee to address the all-encompassing drafting of subclause 148(2), which deals with the seizure of security and vehicles for compliance. Under the corresponding clause 144 of Bill C-31, the seizing power was temporary and was to apply until the obligation is met. With this new drafting, these discretionary seizing powers are very broad and have no time limitation. This is frightening for transportation companies and their shipping agents, especially with greatly expanded duties and liabilities under paragraphs 148(1)(a) and (c).

To give you a further understanding of the impact of clause 148, consider the example of the current situation of the 30-plus stowaways who arrived last week on a COSCO ship. The company has deposited security in the amount of over $1 million. But under the act, the new section 148 would permit government to seize the ship in addition, sell it, and forfeit the proceeds. Government would have this power under clause 148. We think this is going too far in terms of the powers granted government.

[*Translation*]

Honourable committee members, I thank you for your attention. I would be pleased to further elaborate on the federation's position during the question period. Thank your, Mr. Chairman.

[*English*]

The Chair: Thank you, Gilles.

I believe the Chamber of Shipping of British Columbia and yourself were to do a joint submission.

Mr. Cartwright, do you have any further information over and above what Gilles talked about, or is it exactly the same submission?

Mr. Ron Cartwright (President, Chamber of Shipping of British Columbia): It's very true—we are sister organizations, the difference being that the chamber represents the international sector on the west coast.

Our concerns are the same. Our concern is with the illegal immigration aspect. We have no problems with the main thrust of the Immigration Act. It isn't our concern.

As for the points made by Gilles, it is our view that the definition of "transportation carrier" in particular is too broad. One particular point I'd like to add to Gilles' presentation is that if you take the present definition to its ultimate, you could see Canadian exporters and importers deemed to be transportation companies, because they are often ship charterers, and therefore are operating the vessel.

• 1100

I'd also like to emphasize the basic inequity existing in the current legislation, as well as in the proposed legislation, when the agent is described in this very loose and broad context. The maritime agent function is many-layered. In many cases it does not include a clear rule as the legal agent for the shipowner. It's an agency as a result of a charter contracted. It really doesn't go to the root of the legal agent requirement.

You've heard Gilles give the example of the COSCO ship that called in Vancouver. In this context, one has to realize that the shipowner is as much a victim as anyone else. Illegal stowaways are not what his business is about. This carries awful implications, both in operational and economic consequences, plus now apparently the seizure of his vessel.

Again I would illustrate in the case of COSCO that in spite of being well able to provide security, collateral—in the form of irrevocable letters of credit—the department still chose to take over $1 million in cash, which I think again is a duplication of the whole role of collateral.

But having said this, I'm only adding more emphasis to the points Gilles made in the earlier presentation. Therefore, I won't go through the detail again.

The Chair: Thank you very much, Ron, on behalf of the Chamber of Shipping of British Columbia.

We'll now proceed to the Canadian Bureau for International Education. Is it Claudette or Jennifer who will...? Okay, Jennifer. Thank you, and welcome.

Ms. Jennifer Humphries (Director, Scholarships and Awards, Canadian Bureau for International Education): Thank you.

[*Translation*]

We are here today to speak to you about foreign students, an important clientele that is little mentioned in Bill C-11. We are speaking on behalf of our members who are the administrators, counsellors, professors and students of community colleges, cegeps, universities and school boards throughout the country.

The CBIE is an non-governmental national organization whose mission is to encourage international understanding and international development through education. My role is to give you the context. My colleague, Ms. Fortier, will then deal with the specific problems that hinder our success in recruiting foreign students and give you our recommendations in view of resolving these problems.

[*English*]

First of all, I would like to emphasize the importance of international students. To whom are international students important? Ah, some of you may say, they're really only important to our educational institutions. So why are we bringing this case before this committee of Parliament that deals with the overwhelming issues of immigration and refugee protection?

Indeed, international students do matter to Canada's academic life. There's no doubt about it. But the impact of international students goes far beyond the cultural and the scholarly. In fact, there is solid proof that our country's economy and the economies of numerous individual communities are massively benefiting from international students.

Recently our colleague from the Association of Universities and Colleges of Canada, Ms. Sally Brown, mentioned to you that international students bring in $2.7 billion annually to this nation. We at CBIE often call this Canada's hidden export, and the economic benefit continues well after the students go home. It is well known that alumni look first for trading partners in their former host country. It is also common knowledge that many of our alumni become business and political leaders at home. I'm sure many of you have studied abroad and know its value to you personally and to your country.

• 1105

International students are an important clientele for Canadian education and for Canada more broadly. They are also an important clientele for Citizenship and Immigration Canada. CIC has recognized its role in facilitating the entry of international students. We at CBIE greatly appreciate the steady work of the Advisory Committee on Immigration and International Students—known to insiders as ACISI—hosted by CIC. However, despite the positive efforts, we think it is fair to say foreign students are not a major priority for CIC, and we believe 100% that they should be.

Let's look at what's happening now. The number of international students applying for student authorizations has skyrocketed over the past two years. From 1998 to 2000, CIC recorded an increase of 63%. We now host 100,000 international students at all levels of study. That means our promotional efforts are working. Officials estimate it only took about 1% longer to process applications in 2000 than it did in 1999. However, even CIC personnel are scratching their heads and asking how they can possibly maintain this processing time if the volume goes up again this year.

What if the demand mounts and delays and backlogs ensue? Will international students wait for entry to Canada, or will they turn to competitor countries that make admissions easier? There is evidence this is what happened in the latter part of the nineties, when Canada's numbers declined sharply and those of Australia, the United States, and the United Kingdom steadily rose. We believe that could happen again.

So what if we lose 3,000 or 5,000 students to our competitors? So what, indeed. Each student brings in about $18,000 a year, so if we lose 3,000 students, we lose $54 million. If we lose 5,000, the figure is $90 million.

We know our competitors have advantages above and beyond streamlined student visa processing. Virtually all of the other major host countries have national policies that commit them to international education, including attracting and welcoming international students.

Despite all the rhetoric, the way a country handles international students at the missions abroad and at the ports of entry plays a major role in determining its success or failure as an international education provider. That is what our clientele tells us. Good immigration processing brings students in and bad processing repels them. In 1999, CBIE conducted a survey of 1,500 international students. Over 40% of them indicated they had encountered difficulty with immigration officials when applying for student authorizations. These difficulties ranged from rudeness to misinformation to serious and unexplained delays that jeopardized their start times for their studies.

I've brought along a few copies of this for your information, and Mr. Lahaie has already passed those copies out to you. The document is called *Canada First*.

The harsh reality for Canadians is that when we falter, the U.S. or another competitor steps in with easier and faster service.

[*Translation*]

My colleague will now outline our options aimed at avoiding such setbacks.

Ms. Claudette Fortier (President, Advisory Committee on Immigration, Canadian Bureau for International Education): Thank you, Mr. Chairman. This will take a few more minutes.

In this context, do we ask ourselves how Citizenship and Immigration Canada might become a font- line partner in the positioning and competitiveness of Canada with regard to international education and the welcoming of foreign students?

We have prepared a few recommendations which, we hope, will be taken into consideration in the drafting of the regulations that will follow passage of Bill C-11. Clearly, it is in the areas of the regulations and of human and financial resources that we are seeking your support and your intervention.

We will be repeatedly referring to a recent study done by the Association of Universities and Colleges of Canada, or AUCC, which compares Canada's international education policies and practices with those of our competitors, namely the United States, Great Britain, Australia, France and New Zealand.

[*English*]

Our first recommendation is to streamline the processing of student authorizations, commonly called student visas. The AUCC comparative study

of the key countries hosting international students reveals that Canada has the longest overall processing times for student authorizations, likely due to the fact that Canada has the longest medical exam processing times, a point we will consider in a moment, and due to the increasing volume of applications.

• 1110

As noted by Jennifer, the applications increased by 63% from 1998 to 2000. The number of applications accepted rose by 53% over the same period. Sluggish processing is a major impediment to international student recruitment by Canada. We would urge CIC to establish service standards that would allow Canada to compete more efficiently with countries active in the recruitment of international students. Additional staff resources should be provided and posted in regions where immigration authorities are experiencing the largest increase in student authorization applications. When possible, staff rotation and vacations that post abroad should not coincide with peak student application periods—and it happens.

You may not know Spanish students cannot apply in Spain. They must apply through Paris. There are new regions where CBIE is itself trying to recruit, but is hampered by the absence of local processing. Our new project with Uzbekistan is an example. Students going to the U.S. and U.K. can apply to offices in Tashkent. Students going to Canada must take a six-hour flight to Moscow to be interviewed and have a medical examination. No wonder the Uzbek foreign study foundation has offered hundreds of scholarships for the U.S. and the U.K. over the past three years, and only twelve so far for Canada.

Our second recommendation is to streamline the processing of medical exams. The time lag in processing medical exams is an oft-mentioned impediment to study in Canada, and is once again a key reason that our competitor countries process visas more quickly and efficiently and receive more students. We don't question the importance of medicals, but we strongly recommend that the pilot program for streamlined medical exam processing be extended quickly to more countries, following on the very successful pilots in Asia and South America.

Recommendation three is the expansion of employment opportunities for international students. The opportunity of working off-campus is a factor of importance to international students when deciding where to study, and an issue that international students often inquire about. Among the top host countries for international students, Canada is the only country that does not provide off-campus opportunities for international students, with the exception of co-op job opportunities and post-graduation employment.

CBIE urges CIC to expand the current employment opportunities offered to international students, to include the possibility of working off-campus —which is part-time during the school year and full-time during the summer holidays—so long as it does not affect the performance and the normal schedule to complete degree requirements. CBIE is currently lobbying CIC for the introduction of this new work provision as a pilot project for college and university students. The proposal includes a recommendation to renew the employment authorization on a yearly basis, with renewal contingent on proof of full-time registration status and acceptable academic performance.

Recommendation four is for reinforcement of consistency and transparency. One of the most frequent concerns raised by international students and practitioners in the field of international education is inconsistency in the application of immigration regulations. Some typical examples are issuance of one-year student visas instead of a long-term student visa for the duration of the program, or a requirement to pre-pay tuition fees, to establish a bank account in Canada before arrival, or to purchase insurance, just to name a few. We need to keep differentiation to a minimum, clearly stating reasons for unusual conditions, to ensure that we are treating students equally and fairly, and are being perceived to do so by the outside world.

• 1115

Finally, our last recommendation—bear with us—is to facilitate the change of status from visitor's visa to student's visa from within Canada's border. According again to the AUCC survey, Canada is one of the rare countries not allowing their visitors to obtain a student authorization from within its borders. While we understand that Canada must protect the integrity of its borders, it might consider allowing some categories of visitors to apply for student authorization from within Canada. An important group for whom this change would be beneficial are English second language and French second language students. Many of these students decide to undertake college or university studies following their language program. This is an important clientele for our post-secondary institutions, and we have lost many of these applicants as a result of the long and complicated procedures for obtaining a student authorization outside Canada's borders.

To conclude, we urge this committee to declare international students a priority clientele for Citizenship and Immigration Canada, to instruct CIC to design regulations that enhance international student admissions to Canada, and to urge Parliament to commit substantial new funds to allow CIC to carry out its role effectively. CIC is currently viewed by prospective international students as a gatekeeper. While we understand that Canada does not and should not have an open border, we must establish an open door policy for the huge number of bona fide international students who wish to study with us in Canada.

[*Translation*]

Thank you for your attention and for your patience.

[*English*]

The Chair: Thank you for your fine presentation. I wish we had had it sooner. I know sometimes meetings get changed and everything else, but it would have been helpful for us to have it, so you wouldn't have had to read it and we would have had it in advance to be able to prepare for it. We all have to do our process thing, as you know.

David, it's the same thing for you. Welcome to the CLC. I understand you don't have a brief either. It's problematic, but let's go.

Mr. David Onyalo (National Director, Anti-Racism and Human Rights Department, Canadian Labour Congress): I don't have a brief. I'll just provide a verbal overview of what's going to be in the brief we'll be mailing to you in the next ten days. I understand that you will be on the road, but we will be available to answer specific questions, because the brief will have recommendations that will help you in your clause-by-clause deliberations.

Going back to our brief, it will have two main areas that we'll be addressing under the category of human rights, where we'll be talking about our recommendations in respect of refugee rights and protection, and also issues we think are important in respect of family reunification and some other issues.

The other major piece of that brief will be on what we will categorize as economic issues and workers' rights, which is what I'm going to be concentrating on today in order to provide another view. Within those economic issues and workers' rights we'll be talking about issues concerning temporary workers, we'll be talking about skills and training, and apprenticeship issues as well.

I am just going to give you a quick overview and concentrate on the whole area of economic issues and workers' rights.

The CLC has never accepted the notion that immigration should be tied to economics. The immigration policy must be shaped by humanitarian ideas. We support an open immigration policy, on the grounds that diversity is good for our society and that population growth creates a strong demand and prosperity. We have consistently opposed an economic criterion in selecting immigrants. Giving preferential treatment to wealthy immigrants or immigrants with certain occupational credentials sought by Canadian employers is not the answer to economic needs. Tying immigration policy to so-called skills shortages is questionable. Our answer is an economic strategy based on full employment and equity, one where all workers, including immigrants, have the right to secure well-paying jobs. It means a society where the employment barriers faced by women, persons with disabilities, aboriginal peoples, and people of colour are eliminated.

The massive cuts in federal training dollars and the shifting of the course of training almost entirely to the individual worker and students is contributing to the skills shortages in the skilled trades. We must take a closer look at what we mean by skills shortages. We note that this bill does move away from designated occupations, which is a positive thing, but points will still be awarded on the basis of age, language ability, skills, qualifications, experience in skilled occupations.

• 1120 

I want to also talk about recognition of learning skills. We have all heard cases of internationally trained doctors driving taxis because of enormous barriers in getting access to their own chosen profession in Canada. This is not restricted to the medical profession, it applies to most professions.

We also want to give some guidance in respect of temporary workers. We are hoping that Canada is not moving towards the European model, whereby you have people who move to Europe as migrant workers, but never have any access to applying for citizenship in those countries. We believe the direction the Canadian Government is going in, creating a whole new category of temporary workers, is leading to that European model, which we have some really serious problems with.

I also want to talk about investment in training. Whether we are talking about the old economy or the so-called new economy of highly skilled workers, Canadian workers are well aware that access to education and training is absolutely crucial to their employment and income. They know this from their first job interview. Government skills policy has not helped either. The repeal of the National Training Act in 1996 has reversed a long history of federal support for workplace training that started with the Laurier government in 1900.

I will stop there to allow for discussion, which is what I think this committee wants. But I reiterate that we really want to provide some guidance, some recommendations on this whole area of economic issues and workers rights. Thank you.

The Chair: Thank you very much, David, for that. We look forward to seeing the full brief before we get into the clause-by-clause. Thank you, because you had some very good points.

Now we move to REAL Women of Canada. Diane and Sophie, welcome.

Ms. Diane Watts (REAL Women of Canada): Thank you very much. REAL Women of Canada is an organization of Canadian women from all walks of life and differing economic, social, cultural, and religious backgrounds. We are united in our concern for the family, which we regard as the foundation of our society.

We're very strong supporters of immigration. We believe it's very important for Canada. One of the reasons is that Canada's birth rate has fallen to 1.55 children per woman of child-bearing age. Replacement level for a population is 2.1 children per woman of child-bearing age. Denis Desautels, the federal Auditor General, pointed this out in his final report on February 6, 2001. He stated that enormous pressures will be placed on government finances by the year 2015 because of this decline of births. He warned that today there are five Canadians of working age for every Canadian over 65 years of age. By that time there will be 2.5 workers to maintain the financial infrastructure of our country.

Immigration is not the only solution to the problem. The other alternatives we recommend are raising of the age of retirement, providing tax breaks for families, encouraging families, and greater encouragement to enter private pension plans. We've distributed our briefs. I'm on page 2 right now. On page 2 we outline the favourable aspects of the bill. We also would like to comment on the detrimental provisions in the bill, about which our organization has very serious concerns.

One aspect is the family reunification policy. We believe families are the foundation of our country, so we're very much in favour of that. But clauses 68 and 69 refer to the best interests of the child as a deciding factor in accepting claimants. We believe this is discriminatory towards other family members and provides an opportunity for abuses and a circumvention of the act. We believe that the best interest of the child is important, but should not serve as one of the deciding factors for admissibility. So we recommend that the best interest of the child be deleted, and that the bill be amended to retain a more general provision of humanitarian and compassionate ground.

Another area that is detrimental and causes grave concern to our members across Canada is the highly controversial loophole included in this bill regarding family class immigrants. Now I'm on page 4 of our brief.

• 1125 

Bill C-11 will provide that common-law heterosexual couples and homosexual couples be admissible to Canada as legal spouses. This means that anyone who might want to pretend to be some Canadian's partner will be treated as family class, with equal standing to parents, children, and legally married spouses.

This amendment creates a unique loophole to provide for couples of convenience. At present, the immigration department has difficulty verifying legal marriages. Verifying non-legal partners will cause serious administrative difficulties.

We're also concerned about the fact that this is being introduced by regulation. The provision to admit same-sex couples and common-law heterosexual couples to Canada as spouses was not written in the bill itself. Instead, the government, obviously in an attempt to avoid messy public debate on what constitutes a family and who qualifies as a spouse, has eliminated the controversy by not including these definitions in the bill.

Now, we hear a lot about clearness and transparency, but we believe this is not transparent. Clause 14 of the bill provides that these definitions will be set out later by regulations. A bill has to be debated and passed in the House of Commons, whereas regulations, which are usually concerned with non-controversial procedures or administrative matters only, and not matters of substance or policy, are almost always passed by cabinet by way of an automatic rubber stamp.

Defining "spouse" and "family", something that has really involved a lot of controversy in Canada—in Supreme Court cases and in passing other bills—does involve serious policy issues. Passing them into law by way of regulations behind the scenes, rather than by Parliament, is, we believe, highly autocratic and undemocratic. It is definitely not clear and transparent. In short, we believe it's highly irregular and improper that a major policy change, bypassing Parliament, is being implemented by way of regulation.

Now, the Liberal government previously proclaimed in the House of Commons in June of 1999, during a debate on marriage, that the definition of marriage and of spouse is restricted to one man and one woman only. Minister of Justice Anne McLellan is on record during that debate as stating that her party was in support of the decision of the British House of Lords, in *Hyde v. Hyde*, 1866, which is a foundational case and decision. We would refer you to *Hansard* for Minister McLellan's statement that this decision, this judgment, held that marriage was a union of one man and one woman to the exclusion of all others, and that this definition was considered clear law by Canadian citizens, academics, and the courts.

Ms. McLellan also made this point when she included the same definition in Bill C-23, regarding same-sex benefits, so it's highly surprising that this bill would go contrary to something the government itself has supported.

As well, we point out that the Supreme Court of Canada has made statements about this highly controversial issue. They have stated that, for those who accuse people of pointing out the difference between marriage and other partnerships, in the case of Nesbit and Egan, it is not discrimination to provide special recognition and benefits to that relationship, the relationship of marriage.

We would quote here from Mr. Justice La Forest, who spoke on behalf of the majority, which is five Supreme Court judges, in 1999:

> ...heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship...

We believe most Canadians strongly support the family and support marriage.

He continues, in paragraph 25 of the judgment:

> It is the social unit that uniquely has the capacity to procreate children and generally cares for the upbringing, and as such warrants support by Parliament to meet its needs. This is the only unit in society that expends resources to care for children on a routine and sustained basis.

As well, the restriction of the word "spouse" to heterosexual couples is a long-standing tradition in English and Canadian common law as well as European law, which also restricts spousal and conjugal status to heterosexual couples.

• 1130

Provincial human rights codes in Canada recognize and include sexual orientation as a specific ground for discrimination, but at the same time, they maintain definitions of marital status and spouse. They recognize the distinction.

American courts and legislatures have continued to recognize the legal status of marriage and spousal relationships as uniquely heterosexual. But in this bill, you see the opposite happening in a very unclear manner.

The distinction between heterosexual and same-sex partners is followed in Europe. At the European Court of Human Rights, the European Commission of Human Rights does not consider excluding same-sex couples from marriage or spousal status as discrimination.

The UN Universal Declaration of Human Rights, the UN International Covenant on Civil Rights and Political Rights, the European Convention on Protection of Human Rights and Fundamental Freedoms—they all recognize that the legal status of marriage is a longstanding tradition, internationally and in our nation. And they recognize heterosexual couples, which establish families, as necessary to the founding and continuing of our nation.

These conventions also recognize the family as the natural and fundamental group unit of society, and one which is entitled to protection by society and the state. We quote a couple of cases from New Zealand, and also one determined by the European Community treaty, which stated that it is not discriminatory to recognize marital status as unique.

We also mention the religious context, the view of the majority of mainstream religions. According to the evidence we've given you, including homosexual partners as spouses in the regulation is contrary to Canadian law and to our history. We believe it's unacceptable, and that this loophole must be eliminated from the bill. We strongly recommend that. That's one of our recommendations.

The next area we note is reducing a sponsor's responsibility. The length of time a sponsor is responsible for a spouse has been reduced from ten years to three. The result of this is that any unmarried individual, whether homosexual or common-law heterosexual, may now bring in anyone as a so-called spouse.

Since no documentation of the relationship, such as a marriage certificate, is required, there is no way to prove that the two people are not partners. The sponsoring individual need only be responsible for the supposed spouse for three years. Upon separating—since they're not married, there's no need for a divorce—this former spouse may apply again to sponsor the immigration of another spouse.

So we have, or could have, a revolving door for spouses. Bill C-11 leaves the door open for open-ended promiscuous relationships to be rewarded at taxpayers' expense. We believe this makes a mockery of marriage and of the family reunification policy, which has played a very important part in our immigration policy over the years. Since marriage and family are the foundations of society, we are concerned about this.

The other area we believe there's a problem with is the inclusion of unmarried partners as spouses. Under clause 38 of the legislation, "family class" members could include common-law heterosexual and homosexual spouses. Unlike other immigrants, they may be admitted to Canada even if they are a danger to public health and safety, or might cause excessive demand on our health and social services.

Under the proposed legislation of Bill C-11, Canada will become a haven for individuals with diseases such as tuberculosis, malaria, or AIDS, if those individuals fall within the greatly expanded definition of "family class". When we think of "family class", we think of the previous legislation, but this is greatly expanded, and seems to include almost everyone. This gives rise to concerns about our already burdened health care system.

We quote a *Globe and Mail* article outlining the costs of caring for some of these health difficulties.

To review our recommendations, we have four.

The Chair: I'm running out of time.

Ms. Diane Watts: It will only take a second.

• 1135

The Chair: We've heard your recommendations, and we have them here. If you could keep it to two minutes, please....

Ms. Diane Watts: It's very short.

One: in the best interests of the child, "discriminatory" should not be an overriding factor in determining admissibility, since it opens the way to abuse and circumvention of the act.

Two: admittance of spouses to Canada as family class should be restricted to legally married couples only.

Three: a sponsor's responsibility should remain at ten years, in order to protect Canadian taxpayers.

And four: the likelihood of medical expense and pressure on our health system must preclude medical exemptions for "family-class" immigrants. We're opposed to broadening that, and we believe there should not be exemptions for a broadened "family class".

Thank you very much.

The Chair: Thank you very much for your brief.

A couple of things. First, I don't know how you can use the word "undemocratic". This is a democratic institution—it's called Parliament. We are all duly elected, and in fact exercise that vote.

Secondly, with regard to some of the issues you raised, such as the definition of spouse, I should refer you to the omnibus bill that covers all legislation, and in fact will be implemented in this act—as in many other acts. That was Bill C-23, the act to modernize the statutes of Canada in relation to benefits and obligations. It was passed by the 36th Parliament of Canada, and received royal assent on June 29, 2000. So that whole debate as to what a spouse is was done a year ago. This one separate act takes into account the larger omnibus bill that was passed last year. I thought I should just let you know that.

We'll go to questions. Inky.

Ms. Diane Watts: We differ very strongly on that.

The Chair: I know you do. We're going to ask questions.

Ms. Diane Watts: We believe this should be respected democratically.

The Chair: No, but I have to correct the record. It was democratically passed by the House of Commons. I wish you would stop using the word "undemocratic".

Anyway, Inky, if you could—

Ms. Diane Watts: Our statement and our brief—

The Chair: Inky.

Mr. Inky Mark: Thank you, Mr. Chair.

I want to welcome our witnesses here today. It's unfortunate that you didn't precede the department, because you raised a lot of issues today, and it would certainly have been interesting to hear the department's responses to them.

I have three questions. I'll start with the representatives from the shipping industry. I think the key question is where does the responsibility lie? I think we're all responsible for every part of the equation, from the beginning to the end.

As you know, the RCMP commissioner was here this week. He says the RCMP has provisions to confiscate ships and boats engaged in illegal activity that come to our shores. Mr. Mahoney and I met with the Australian senator a couple of days ago. He told us that in Australia, they seize everything that comes within 200 miles of their border. They have the right to seize boats and to keep them.

So in this business of transporting illegal humans or other contraband to our shores, do you think it would be a deterrent if the shipping industry gave notice that this would happen—that if people are detected transporting illegal migrants, they lose their boats? Even if it isn't permanently, even if it's just for a short time, do you think that would be a deterrent?

Mr. Gilles Bélanger: Primarily, the liability lies with the system. Our system is an open invitation to illegal migrants, entering by way of stowing away or deserting. That's where the problem is.

Do you think that this west coast company referred to has been bringing these people in voluntarily? None of us have. We're spending millions and millions of dollars trying to detect these people and prevent them coming in.

In conjunction with the Government of Canada, we're using carbon dioxide detectors in a number of European ports of embarkation—the ones that were the worst a few years ago. We're trying everything we can, but we're dealing with people smugglers, and as soon as we block one hole, they find another one. They have the money, and they have the capacity.

• 1140

Why do they do that, why do stowaways risk their lives to come to Canada? Because they feel they're going to be able to be here for 10, 12, 15 years, because of the laxness of our system. They're going to be able to earn some money, and send money home to their families, while the system proceeds in Canada. That's what we have to change. Let's change the system.

We have nothing against the refugee programs, but we have something against the processes—they are not good. If the refugee goes through the process, gets to the end and is turned back, then a repatriation order is sent to the refugee by mail, for goodness sake. Why shouldn't that refugee be ordered to be in court to receive the decision, so the authorities can take measures? But no, it's sent by mail, and the refugee disappears. He can be here for another five or ten years, and eventually get caught crossing at a red light. Then, when we find out he's there, we'll finally take action. That's where the biggest problem is.

In terms of the seizures you referred to, the point I was trying to make on the west coast issue is that there are provisions to provide collateral to the government—in this case money, our hard cash—to cover eventual costs. But as it is, the act would permit the government to punish companies just for unknowingly having brought in undocumented persons. They could have their ships seized and sold as a punishment. Until now, the case has been to provide resources to correct the problem. If a refugee is repatriated, we assume the costs, even if it takes place 10 or 15 years later. We pay administration fees for every refugee or deserter. So we are the victims too, don't forget that. We are the victims of a system that is too lax.

Mr. Inky Mark: I understand you're a victim, but so are many other people. That's exactly the problem. But you're also at the front end of the problem. For example, if you drive across the American border with contraband in your trunk, do you think they're not going to confiscate your

vehicle, and probably throw you in jail as well?

Mr. Ron Cartwright: Yes, but in that situation whoever has contraband knows full well that he's carrying it. The shipowner is not necessarily....

Mr. Inky Mark: Who is going to be accountable? Who's going to account for these people ending up in cargo containers in the boats, and coming over here?

Mr. Ron Cartwright: With all due respect, I think you have to look at the overall transportation chain as it happens on the other side. Containers are loaded and brought down to the terminals. And bear in mind that a working ship is probably loading 30 or 40 containers per hour, in five different hatchways. Whatever diligence the owners apply, there are still situations when these containers go undetected. It's true that the carrier in that situation is as much a victim as anyone else.

Furthermore, the act would allow the ship's agent—who himself may well be a Canadian taxpayer, simply conducting his traditional business as a marine agent—to be deemed a transportation carrier as well.

We're saying that it's not realistic. You have to look at marine transportation in the context of its scale, its breadth, its reach from the hinterland of countries. It's not simply a question of an owner inviting people on board—far from it.

Mr. Inky Mark: I understand all the liability issues involved. Perhaps the industry needs to get together around the globe and formulate a collective resolution to this.

• 1145

Mr. Ron Cartwright: But it's not only the industry. The shipowner is a carrier in this context. He's not necessarily the party responsible for filling the container in the first place. He's carrying merchandise, and to the best of his knowledge he ensures that, and Gilles has mentioned some of the precautions and due diligence that owners take in this regard. This is collusion on a grand scale. People smuggle in this business.

Mr. Inky Mark: Well, we understand.

The Chair: The last question, please.

Mr. Inky Mark: Okay, I'll go to my next question.

Thank you for your response.

To the CBIE, I'm delighted to have you here before us to inform us of all the real data and the impact that students have on this country. Unfortunately, too often we concentrate too much of our focus on dollars, investors, skilled and career people, who account for most of the immigration. We tend to forget about the economic impact and also the future investment, really. It is an investment, not only when they come here, but as you say, a good number of them stay here.

I guess my question is on the kind of relationship you have with CIC currently. Also, do you have any relationships with our offshore offices, and have you informed the department of the problems that exist in the department so that we do get these corrected?

Ms. Claudette Fortier: Thank you for your question.

Yes, we do have an advisory committee—Mrs. Humphries mentioned it. It is an advisory forum to Citizenship and Immigration Canada. We have an excellent working relationship with them, but we thought this would be a good opportunity to inform you. And you are very right in saying that this is an important clientele, not only for Citizenship and Immigration Canada, but for Canada as well.

Mr. Inky Mark: Are you being listened to?

Ms. Claudette Fortier: Pardon me?

Mr. Inky Mark: Is your advisory committee being listened to by CIC?

Ms. Jennifer Humphries: We are being listened to to some extent within the capacity that they have. Our concern is that resources for international student processing seem to be at the bottom of the heap in terms of resourcing.

Last year in the budget for 2000 there was some money allocated to clear up a backlog of immigration applications, which actually had an impact on the international student backlog as well, but international students are a cyclical thing. It comes in the spring and summer, and at that time the resources are crucial.

So what we're afraid is that the money last year will not be repeated, and in fact we're going to stay at the status quo.

One of our problems in terms of posts abroad.... Our posts abroad are very good. They're doing what they can within the power and the resourcing they have, but the British council offices are worldwide. The U.S. has offices worldwide. We have very few posts that actually process international students. Many of them are centralized in London, Paris, etc., so we're asking for the increase in the number of posts that do processing as well as the number of staff who are available to do the processing.

The Chair: Anita.

Ms. Anita Neville (Winnipeg South Centre, Lib.): I apologize, because I have to leave in a moment. My question is to you as well.

I've just come back from a tour of various immigration posts in Southeast Asia, and was at the Korean Canadian education centre and saw the processing. That post is processing just under 12,000 students a year from elementary to post-secondary, with a turnaround time of two to three days, having the medical review done, coming in with the application. Is there inconsistency between the posts? I heard your response to Mr. Mark in terms of the need for more resources and more posts, but is some of it being done well, and can we build what's being done well into other areas?

• 1150

Ms. Jennifer Humphries: Absolutely. Korea is a case where in fact it is translating into a large number of new students in Canada, if you look at the statistics.

What has happened in the recent past is that the Government of Canada has been a partner and has supported the development of a Canadian education centre network, and that does work where it goes hand-in-hand with a post that does the processing. It's working in Mexico, for

example. It's working in Korea. But there are cases where it just is very difficult, and it takes a long time for students to get those authorizations. It's just that Korea is an example of a good-news story. There are so many bad-news stories, and not only the egregious examples such as Beijing, where we have time and again had problems there. There are political situations as well behind all of that, but there are other clear examples where it should move more quickly, and it doesn't.

Ms. Anita Neville: Thank you. I'm sorry, I have to go.

The Chair: Yolande, a question.

Ms. Yolande Thibeault: Thank you. My question is to Mr. Onyalo.

I was intrigued by your short presentation. Thank you very much. Sometimes short presentations are more intriguing than longer ones.

You mentioned in passing that Canada was moving away from its traditional way of handling temporary workers. Did I understand correctly? I would like you, if you please, to elaborate a little bit more on that.

Mr. David Onyalo: Yes. What I meant is that in this whole discussion around skill shortages, it looks like the direction the government is taking is to listen more and more to employers who'd like to bring highly skilled people, particularly in the technology area, to this country. Our fear is that what essentially is going to happen is that we'll end up with people here on a short-term basis, whether it's three months, five months, six months, and then once their short-term contracts are over, they would leave.

But the problem is that some of those short-term needs might translate into longer-term needs, so you might end up with a pool of workers who are here for years and who maybe are contributing members of Canadian society but have no access to the process where they can be permanent residents and eventually be able to apply for citizenship.

If you look at Europe right now, you'll find there are generations of workers in Europe who went as migrant workers and who have families, but they would never, ever get access to the citizenship process. We think that the Canadian model helps people have a certain loyalty to the country where they've contributed—a certain sense of connection with this country. But if we end up with this model whereby the Canadian government is trained to meet the needs of some employers, we end up with a pool of workers who essentially are going to be temporary people in this country and will never, ever get access to citizenship.

So that's what I was alluding to, and thanks for your question.

Ms. Yolande Thibeault: Thank you very much.

The Chair: There is time remaining on the Liberal side. Steve Mahoney.

Mr. Steve Mahoney: How much time is remaining?

The Chair: About five minutes.

Mr. Steve Mahoney: Maybe I'll make a couple of comments, and folks can pick it up.

On the education issue, it's my understanding that our regulations will in fact allow for an in-Canada application system, and that students should have bona fide job applications, which also addresses your very good point about greater opportunities for employment for foreign students.

So hopefully this bill will respond to those very good concerns of yours, and I guess one of the comments I might make is that I too have seen our foreign offices, and some are much more efficient than others, due to a lot of different reasons. Just the working conditions.... If you want to see where the people in Kiev have to work, it's in a building that would be condemned in this country, and the fire department would shut it down in a heartbeat, and so it's pretty difficult. They can't even get their file drawers open. So those are really logistical, on-the-ground difficulties that we have to deal with, and I think your points are well taken.

• 1155

To the shipping—I was going to call you magnates, but I'd better not do that—to the shippers, I assume that you would support seizure of what I would refer to as pirate ships, of people who are the bad actors in your business who are causing the problem. I have some sympathy for the people who are just doing their jobs and getting caught up in this, but we have to find some way of ensuring and working with you to ensure that there are tests, whether they're heat-seeking tests or whatever the heck it is, X-ray tests, some way of finding, for everybody's sake—for the sake of the illegal migrants, for the sake of the shipping companies, for the sake of the integrity of our system.

Rather than just saying we can't seize them—and my understanding is that we already can under the existing law, so this is not really a major change in terms of seizure—I guess what we want is some method of working with you. It's also my understanding that the word "knowingly", while it doesn't appear in the act, certainly appears in law. The onus would be on the Canadian government. Given that you're innocent until proven guilty, the onus would have to be on the prosecution to determine that the owner of the ship or the agent knowingly harboured these illegals before anybody would go to jail or before any of that activity would take place.

Does the fact that "knowingly" exists in Canadian law not give you some comfort? And what suggestions can you give us where we can solve the problem that you see, and frustration, on both sides? Because we all want to get rid of the bad actors, and therefore, just as in this bill, we want to close the back door to open the front door. We want to put the bad shippers out of business so we can work with the good guys.

Mr. Ron Cartwright: I think we're entirely on the same side here. First of all, there is some comfort in the "knowingly" aspect. I think, though, that tackling the problem is not simply something that can be done on the Canadian side. These containers originate in various locations, in various terminals abroad. It's too late once the container is already on the ship en route to Canada to prevent it happening. In this particular case on the COSCO ship, for instance, the master reported the container as soon as he was aware that this happened. The problem isn't simply a Canadian problem.

Mr. Steve Mahoney: We've recognized that, have we not, in that case?

Mr. Ron Cartwright: Yes.

Mr. Steve Mahoney: Have we not recognized that in that case?

Mr. Ron Cartwright: Well, $1 million is a tough recognition. That's a lot of money, even in Canadian dollars.

Mr. Steve Mahoney: But nobody's gone to jail or anything?

Mr. Ron Cartwright: No.

Mr. Gilles Bélanger: There is a new feature under the act. The seizing power that exists currently is that, if a company is charged with depositing a security in a situation like that, and if they don't comply, there are seizure powers, etc.

But now the new act is a little different, because it criminalizes the fact that the ship has brought in people who were not documented. In the same way in the cruise ship industry today, if a cruise ship comes here, and when they disembark for a local visit, if somebody doesn't have the right papers, the immigration officer will say, "You stay on board". But now, under the new act, the "You stay on board" is not sufficient. The company will be "criminally responsible" and could be facing criminal measures to correct the situation, even if that person stays on the ship and never disembarks.

Mr. Steve Mahoney: I understand that, but I'll just ask you to give some thought to the fact that we've got to find out how to get the bad guys.

Mr. Gilles Bélanger: Correct.

Mr. Steve Mahoney: I want to ask, if I can, Mr. Chairman, David Onyalo a question, because it relates to skilled workers.

I don't know if you've had an opportunity to go over the new grid system for determining eligibility, but I'd encourage you to do that.

In one of the areas, I understand, organized labour has some serious concerns, and I share them. It's in the restrictiveness of the education requirement in many instances. I hope that our regulations are signalling that we're going to recognize skilled trades, apprenticeship, and actual experience, for example, of labourers and people like that. In the 1940s and 1950s, I think we'd all agree, people from Europe—from eastern Europe, from Poland, from Italy, from Czechoslovakia—came to this country without any formal education and have built the country and raised families. I'd like to see us somehow get back to that.

• 1200

One of the proposals I'm putting forward—and I'd be interested in your support if you are willing to do it—is that we take a look at an amnesty period for people who are illegally working here in this country in the underground economy. We could allow them to come forward, perhaps over a 90-day period once this bill is passed, to seek status under the rules. But I think the education requirements have to be carefully looked at.

Mr. David Onyalo: Thank you for pointing that out. It's one area on which we will comment.

Yes, we do also support the idea that people's lifelong skills, whichever way they acquired them, should count for them being admitted to this country as immigrants.

We will take another close look at your suggestion on amnesty. I think it's an important one, and we will provide our comments on it. I think it will probably end up being a positive recommendation.

Thank you for your comment.

The Chair: Thank you, Steve.

Madeleine, finally.

[*Translation*]

Ms. Madeleine Dalphond-Guiral: Thank you, Mr. Chairman.

I would firstly like to make a very brief comment addressed to Ms. Watts. I listened to your presentation and I must admit that I nowhere recognized in your recommendations anything that fits with my own values, and I thought it important to tell you this.

My question is for Mr. Onyalo. I was very pleased to hear mention made—and you spoke quite briefly of this—of the importance of humanitarian values by opposition to economic ones in the whole immigration process. This is something I am very sensitive to because I believe that Canada and Quebec are rich societies and that we therefore have a responsibility at the humanitarian level. To seek out immigrants that are very well trained is in the final analysis to serve oneself, and to refuse the others is to perhaps hurt oneself. I agree with Steve that education is important. But the will to act and to get involved is also important.

I would therefore ask you to give us some avenues we might follow so as to advance the values you outlined in your presentation.

[*English*]

Mr. David Onyalo: Thank you for your points, as well.

We'll reinforce some of those values you're talking about, like the humanitarian principles. I didn't mention at the beginning that we have two components to our brief. I focused on the economic one today, but when you receive our brief you will find we will be supporting the humanitarian aspects of immigration, including the discussion on family reunification.

I must end by saying there's one thing great about this country, and that is that I can sit next to somebody when I'm also quite opposed to their views. That speaks very well to our democratic process and what this country's all about. There was a presentation made here that, in terms of our concept of family and our concept of human rights, I wouldn't be comfortable with. But it speaks well to our tradition of sitting on a panel with somebody we disagree with and being able to listen to other people's views.

Thank you.

The Chair: Anything further? No? Then thank you very much, all, for your recommendations.

Ms. Diane Watts: Comments have been pointed to me. Democratically, may I respond to them?

The Chair: I think she just made a comment. She didn't ask you a question.

Ms. Diane Watts: You made a statement about Bill C-23—

The Chair: Excuse me, but I—

Ms. Diane Watts: —which I believe was a misrepresentation—

The Chair: No, it is not.

Ms. Diane Watts: —of Bill C-23. Bill C-23 did not deal with the—

The Chair: I'm sorry, but we're not entering into debate.

Ladies and gentlemen, thank you very much for your submissions today.

Gilles and Ron, Steve and Inky have both indicated that perhaps you could outline for us, in a very short statement, what those safeguards are that you are in fact presently putting in place. I know you had this discussion with us when we were studying the refugee determination system, when the shipping federation came forward to talk about it.

Mr. Steve Mahoney: That was before all the boats started coming.

The Chair: Secondly, maybe you can tell us some of those responsibilities that you now have, financial and otherwise. Perhaps you could indicate with a one-pager what exactly the extent of the liability is that you presently have with regard to ensuring that you are protecting the system.

I think both Inky and Steve want to try to get to the.... The fact is that we want to make sure there aren't bad shipowners who are in fact using their ships to traffic in human cargo. We want to stop that. At the same time, we also look forward to your ideas. I think you put them forward before, but if you could let us understand the nature of your responsibility and the liability that you presently have, I think it would help us greatly.

- 1205 

Thank you. We'll see you all in Vancouver on Monday.