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## STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

## COMITÉ PERMANENT DE LA CITOYENNETÉ ET DE L'IMMIGRATION

### EVIDENCE

[*Recorded by Electronic Apparatus*]

Tuesday, March 13, 2001

• 0914

[*English*]

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

What we'd like to do this morning is get a technical briefing on the bill before we start hearing witnesses on Thursday. I would ask the committee members to stick around after we deal with this technical briefing so that we can deal with the travel issues, as well as approving the budget. We want to deal with our travel issues right after the meeting.

Today, to make it as informal as we can, Joan and her colleagues from the department will go through the immigration part of the bill, and then we'll do the refugee part. As we go through the immigration part, we'll do it clause by clause in certain categories so that if there are any questions of the department... I'm not going to get into five-minute rounds and ten-minute rounds. Surely we can dispense with that kind of formality for this kind of briefing. So if you have a particular question on a clause that Joan and her colleagues are dealing with, just let me know, and we'll deal with it in quick order.

• 0915

I should also mention to the members that, as you know, when the minister was at the first meeting, some questions were asked in relation to the Canadian Security Intelligence Service. I know Mr. Day asked some questions related to that. The 1999 public report, which is available on their website, is interesting reading. So for any of you who want to read that particular report, it's available on the web. Either we'll produce a copy for you or you can go to the web yourself. That's the beauty of technology.

Also, the minister referred to a pilot project called the Metropolis Project. That also is available. I'll give it to the clerk. We can reproduce it.

I just wanted to let you know that for those particular issues that were raised at the last meeting, we followed up and made sure we had some documentation.

If we can proceed on that basis, we'll do so.

I want to welcome Joan, Gerry, Daniel, Dick, and Paul to our meeting. Thank you very much for coming.

The only technical question I have for now is that, as you know, on Thursday we start hearing from some witnesses in Ottawa. The minister and the department committed that we would have the discussion paper on the regulations. I hope that in fact we do have that paper for the start of that meeting. If there are some questions on the legislation and even a regulatory question today, perhaps you could address it, too. But we need that before the witnesses start on Thursday. So, Joan, I hope we can get that from you.

Let's start. Joan, welcome.

**Ms. Joan Atkinson (Assistant Deputy Minister, Policy and Program Development, Citizenship and Immigration Canada):** Thank you very much, Mr. Chairman. It's certainly our pleasure to be here today to give you a technical briefing on the bill. Also, Mr. Chairman, we will do our best to get the documents that have been promised to the committee to you as soon as we can.

As the chairman indicated, my objective today is to walk you through the bill and highlight the major changes from the current act and also to point out to you some of the changes between Bill C-31 and this bill, Bill C-11.

**The Chair:** Joan, we have volumes one and two for our reference. Do I take it that volume two is what is new in the proposed legislation? If someone wants to make a reference, can you tell us whether it's going to be in either volume one or volume two, just so that we have some—

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**Ms. Joan Atkinson:** Right. What you have in volume two is an overview of the changes in Bill C-11 from the current act. You also have in this volume a number of issue papers that go into more detail on some of the specific proposals in Bill C-11. The next volume you get will hopefully include not only the regulations paper, which has been promised, but the detailed paper that goes through every single clause in the bill.

Let's start at the beginning of the bill with the objectives and enabling authorities. In this bill we have two sets of objectives reflecting the two parts of the bill, objectives that relate to immigration and objectives that relate to refugees. Some of the changes we've made in this bill relate to how the act is to be applied. I draw your attention to paragraph 3(3)(d), which says:

> ensures that any person seeking admission to Canada is subject to standards, policies and procedures consistent with the Canadian Charter of Rights and Freedoms, including its principles of equality and freedom from discrimination, and of the equality of English and French as the official languages of Canada.

That is different from the previous bill, C-31.

The enabling authorities in clause 5 relate to the regulation-making authority generally, that is, that it is the Governor in Council that has the authority to make regulations more generally.

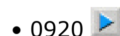
Clause 7 deals with international agreements and federal-provincial agreements.

**The Chair:** When you're referring to a particular clause, could you give us the page number in the bill?

**Ms. Joan Atkinson:** Okay.

**The Chair:** By the way, we're going through the bill.

**Ms. Joan Atkinson:** That's correct. We are looking at the bill itself. I'm on page 5 of the bill, and I'm referring to clause 7, which deals with agreements. As I said, this clause deals with international agreements and federal-provincial agreements.

• 0920 

What's important to note here is that, for example, clause 9 gives full legal effect to the existing Canada-Quebec accord. Clause 10 refers to the obligation and commitment of the minister to consult with provinces on immigration and refugee protection policies and programs.

**The Chair:** I have a question. With regard to the responsibility of the federal government and the provinces in terms of dealing with immigration matters, the bill talks about recognizing bilateral accords, call them what you will, between the federal government and the provinces. You mentioned one, Quebec. I'm not sure we have them with all provinces. If we don't, perhaps you can mention which provinces we don't have an accord with.

As you know, in the first meeting there was a discussion as to what is the family class and whether one wanted to expand the family class to include brothers and sisters, as an example, which are not now part of the act. The minister indicated that either the provinces had raised concerns with regard to that or that further consultation may result in the broadening of that definition of family class.

Based on clauses 9 and 10, what authority does the province have in order to veto? If the federal government wanted to say that the family class would include brothers and sisters, as an example, why wouldn't they be able to do that, since immigration is a federal matter? Perhaps you could just touch on that particular example, because I know it has been raised in the past and it's probably going to be raised again. So what federal jurisdiction, albeit that we have to consult, do we have as a federal government in relation to the provinces to be able to discuss family class matters or, for that matter, other issues as part of immigration? If you could spend a few minutes on that, I think it would be helpful for all of us.

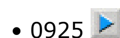
**Ms. Joan Atkinson:** The federal-provincial accords vary according to the nature of the agreement we have with individual provinces. At one end of the spectrum we have the Canada-Quebec accord, which is the most detailed of the federal-provincial agreements we have. Under the terms of the Canada-Quebec accord, Quebec has selection powers with regard to economic immigrants. They determine their own selection criteria for the selection of skilled workers and business immigrants.

In the context of family class, under the Canada-Quebec accord the federal government determines the definition of the category—that is, the definition of who is a member of the family class. Quebec has authority with regard to setting the specific requirements for sponsorship in the family class. Quebec also has the authority to select refugees resettled from overseas. In practice they select from the pool of refugees the federal government selects overseas.

At the other end of the spectrum we have agreements with provinces that relate to information sharing, consultation, and cooperation. We have provincial nominee agreements with a number of provinces. Under those agreements the province can nominate an economic immigrant. They can nominate a skilled worker or an entrepreneur, a business immigrant, but the federal government still retains the authority to select that individual. When a province nominates an individual, they normally do that in accordance with their own economic or demographic objectives. The federal government will ensure the individual meets the selection criteria. Under the regulation a provincial nominee is provided with substantial bonus points as a result of the nomination, which certainly helps in terms of meeting the selection criteria.

In all cases the federal government always retains the responsibility to assess and determine statutory requirements—that is, medical, criminal, and security, regardless of the nature of the particular agreement.

On the settlement side we also have agreements with a number of provinces where we have devolved settlement moneys to those provinces and the settlement programs are delivered by those provinces. That applies in Quebec, Manitoba, and British Columbia.

• 0925 

In terms of the family class, I think what's important in this context is that while the federal government does have, under the terms of the various agreements we have with the provinces, the authority to define the category—that is, to define who belongs to the family class—the commitment in Bill C-11 is that the minister consults with all the provinces and territories on immigration and refugee policies. In particular, the minister consults on the impact of immigration and refugee policies on the provinces.

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I think what the minister was referring to, when she spoke about expanding the family class and the comments or views of the provinces, is the fact that in the context of the consultations we have done with the provinces on the legislation, they have expressed concerns with regard to expanding the family class. Those concerns relate to the fact that when we select people in the family class, we obviously do not look at their economic potential. We don't select them according to language skills or level of education or occupational skills. We select them based on family reunification principles. The provinces have looked at the mix between family class and economic immigration. While they are supportive of our general family reunification policies, they have expressed concerns about the size of the family class component relative to the size of the economic.

So while it's true that the federal government determines the definition of family class according to all the various agreements we have with the provinces, they have expressed views in terms of the policy approach to expansion of the family class.

**The Chair:** Jean, do you have a question?

**Ms. Jean Augustine (Etobicoke—Lakeshore, Lib.):** Yes, thank you, Mr. Chairman.

I just want to understand the difference between "may" consult in subclause 10(1) and "must" consult in subclause 10(2). Can you please speak to the nuances involved here?

**Ms. Joan Atkinson:** The "must" consult in subclause 10(2) refers to the immigration planned and the setting of immigration levels. In the current act, as you may know, the minister is obliged to consult with provinces and territories in setting the annual immigration plan in which the estimated number of immigrants and refugees to be accepted by Canada is set out. We've carried over from the current act the obligation to consult on the immigration plan, but subclause 10(1) refers to the commitment to consult on policies and programs that have an impact on the province. It's not stated as an absolute obligation, but there is, as you can see from our having it in the bill, a very significant commitment to do so.

**The Chair:** Madeleine.

[*Translation*]

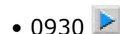
**Ms. Madeleine Dalphond-Guiral (Laval Centre, BQ):** Ms. Atkinson, when one consults, whether the terminology used is "may" or "shall", the party in question is not obliged to take any advice received into account. Consultation is the process of seeking out information. Given the way in which these provisions are drafted, am I to assume that an attempt is being made to show some good will, but that certainly no one is under any kind of obligation?

**Ms. Joan Atkinson:** The requirement that the provinces be consulted provides an opportunity to identify their challenges and problems and to listen to their concerns...

[*English*]

It allows us to take into consideration and account, when we develop our policies, their perspectives and their issues.

I have to say that in those areas of immigration policy where provincial interest is highest, we very much engage them in the policy development at the beginning of the process. For example, provinces have been very interested and concerned with developing the selection criteria for skilled workers. We have had numerous discussions with all of the provinces and territories, and have sought their views on selection criteria for skilled workers. And we have in fact dealt with and incorporated some of their concerns in the way we have developed our policies.

• 0930 

Similarly, with regard to business immigration, where the provinces have a very direct concern, we have, on the investor program for example, very much developed our policies in partnership with the provinces, and sought not only their input, but accommodation of provincial concerns.

I should say that under the terms of the agreements we have with the provinces, in particular the Canada-Quebec accord, but also the agreements with Manitoba, with British Columbia, with Saskatchewan, there is an obligation to consult formally with the province on immigration policies and programs. So it is more, I would say, than simply collecting information. We very much try to understand and take into consideration provincial concerns when we develop our policies.

**Ms. Judy Wasylycia-Leis (Winnipeg North Centre, NDP):** I have a quick question on the provincial nominee programs. What factors enter into determining final numbers with respect to the nominee programs? Does the federal government have the final say? How do you resolve differences with the provinces?

**Ms. Joan Atkinson:** Every nominee agreement with the provinces that have one is somewhat different. We determine the numbers of nominees under each program together with the province. Normally the province will come to us, indicate what their capacity is to provide nominees, and give us some indication of the numbers of nominees they would wish to bring into the province every year. Each province, under the nominee agreement, prepares a nomination plan, in which they indicate the sorts of immigrants they wish to nominate, how those nominated immigrants will meet their particular economic objectives—and they are different according to the province, which, of course, is the whole point behind the provincial nominee agreements, to give flexibility to provinces to identify those immigrants who meet their own specific regional needs.

So in Manitoba, for example, they may be interested in bringing immigrants into some of their rural towns to deal with rural depopulation. In other provinces they may be interested in trying to attract immigrants into their high-tech area, looking for immigrants with very specific skills.

So every nomination agreement is somewhat different, but it's negotiation and consultation, and the numbers are arrived at normally with the province giving us an indication, whereupon there is a process of agreement on those numbers.

**The Chair:** Thank you.

Steve.

**Mr. Steve Mahoney (Mississauga West, Lib.):** Is there anything provinces have in their agreements that would require the new immigrant to

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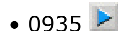
agree to any kind of settlement terms? You say they want to bring them into Manitoba to go to a smaller community, and then they leave and come to Toronto or whatever. Are we allowing provinces to have that kind of control?

**Ms. Joan Atkinson:** Terms and conditions imposed on visas are generally a federal responsibility, and the terms and conditions we can impose on immigrant visas generally relate to fiancées, that they must marry within a certain period of time, to entrepreneurs, that they must set up a business within a certain period of time, and so on. As you know, mobility rights are enshrined in the charter, and so for us to impose terms and conditions on residency in Canada is very difficult, if not impossible.

So it's difficult through the imposition of terms and conditions to try to direct people to certain communities. What provinces, and indeed the federal government, are attempting to do is to ensure, through our settlement and integration programs, that those smaller communities have the infrastructure to welcome newcomers and have appropriate settlement and integration services available, so that those newcomers will feel they can establish themselves there. Certainly with the Province of Manitoba, not only do we have a provincial nominee agreement, but we also have a settlement agreement, whereby the province has responsibility for their settlement and integration programs. That is certainly one of the issues the province looks at.

• 0935 

**Mr. Steve Mahoney:** So I suppose the provinces could use incentives but certainly not directives. A job, or some kind of educational assistance —that kind of thing could be used. But if, for example, the Province of Quebec approved certain people to come into the province, they would have no control over where they settle in Canada. Or, with regard to other landed immigrants coming from other parts of Canada who migrate to Quebec, they would have no control over that, either.

**Ms. Joan Atkinson:** That is correct, yes.

**Mr. Steve Mahoney:** Nor should they.

**The Chair:** With regard to provincial jurisdiction on mobility issues and so on, the question came up last meeting and it has come up before with regard to the recognition of federal or certain professional paperwork from another country. We've been told that's a provincial jurisdiction. What section of the Constitution says that's a provincial jurisdiction?

Secondly, if in fact the federal government reserves the right and we believe in mobility, and associations have the so-called power to recognize credentials from other countries—be they medical, professional, legal, skilled workers, and so on—what jurisdiction do the provinces have? Or is that also part of the consultation that takes place between the federal and provincial governments?

**Ms. Joan Atkinson:** Well, I'll answer the policy issue, and I'll look to my legal colleague to answer the legal issue on where in the Constitution the jurisdiction is derived from.

Access to trades and professions by immigrants, as you know, is a significant issue, and the federal government—not just Citizenship and Immigration Canada, but, I must also add, Human Resources Development Canada—have made a commitment to try to take some leadership in this area.

First of all, I should indicate that under the terms of the social union framework agreement, the provinces that signed that agreement did make a commitment to try to reduce interprovincial barriers to labour mobility and the recognition of credentials under the internal trade agreement by July 2001. That work has been ongoing for some time, primarily with Human Resources Development Canada and the provinces.

In terms of the recognition of foreign credentials, we have co-chaired—previously with the province of Ontario and now the province of British Columbia—a working group on access to trades and professions. We have been working with the provinces to try to establish credential assessment services in the provinces to look at and assess foreign credentials, to set up a network of credential assessment services, and to set some national standards by which all of those credential assessment services would operate.

We don't have any direct jurisdiction in this area, but we have been working with all of the provinces and territories to try to make some progress. You may know that on Monday the Province of British Columbia announced a pilot project on credential assessment for foreign-trained engineers in partnership with the federal government, including Citizenship and Immigration Canada.

So there are some initiatives where we are working with the provinces, but our direct role is limited because of the jurisdictional issues.

**Mr. Daniel Therrien (General Counsel, Legal Services, Citizenship and Immigration Canada):** As to the constitutional issue, I think it's well established that provinces are responsible for regulating professions. The exact source in the Constitution, frankly, I'm not absolutely certain about. I think it would be property and civil rights.

**The Chair:** Not that I want to give you a lot more work to do, Joan, but we are travelling to some provincial capitals, and some of the witnesses, I'm sure, will focus some of their questions as they may relate to a particular part of the country where they live. I think it might be useful for the committee members to have a synopsis of what nominee agreements or federal-provincial agreements we have before us, so that when we travel to B.C., Manitoba, Ontario, or Quebec, we can see exactly what certain provinces are doing and what other provinces are not doing. I think that might be useful for the committee if you could have that for us.

**Ms. Joan Atkinson:** We'd be happy, yes.

**The Chair:** Okay, thank you.

**Ms. Joan Atkinson:** We're happy to provide that, Mr. Chair.

**The Chair:** We'll let you continue to the next...

**Ms. Joan Atkinson:** All right. Well, we've finished the objectives and the enabling authority, so let's move on to the first part, “Immigration to Canada”, in division 1.

Before we start, I should just indicate to you that the bill is organized, we think, in a fairly logical fashion. In the first part, it deals with the

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selection of immigrants and non-immigrants before they enter Canada. This includes sponsorship; examination before entering, on entering Canada, and within Canada; entering and remaining; inadmissibility provisions; loss of status and removal; detention and release; appeals; judicial review; protection of information; and then some general clauses. I'll try to go through those quickly and give you the general highlights.

• 0940

I'm now on page 7 of the bill, looking at clause 12. We've been talking about family class. I would point out here that subclause 12(2) is the part of the bill that speaks to family class. As pointed out, the difference from Bill C-31 is that here in Bill C-11 we have clearly indicated that parents are members of the family class. It has always been our intention that parents would remain as members of the family class, but there was some comment that it was not clear in the previous bill. It is clear here.

Again, the exact provisions of the family class will be found in regulations, but what this does is enshrine, in legislation, the fact of the family class and the key components of that family class.

I would also point out to you subclause 13(4), instructions of the minister, which was also in Bill C-31. It allows us to provide more explicit instructions to guide decision-makers in their decision-making under the act and the regulations. There are often complaints that we are inconsistent in our decision-making. Instructions from the minister is a tool that allows us to be more directed in the types of guidelines and instructions we give to our decision-makers. This particular clause refers to assessments made under the sponsorship rules.

We have a similar provision with respect to examinations and then later on in the bill temporary residency permits.

**The Chair:** Ms. Augustine.

**Ms. Jean Augustine:** I would like to spend a little bit of time, Mr. Chairman, on the sponsorship of foreign nationals, which is I think in subclause 13(2).

Could you take us through an explanation of what is meant in there?

**Ms. Joan Atkinson:** Subclause 13(2) actually refers to sponsorship of convention refugees or persons in similar circumstances—that is, other protected persons or persons who are in refugee-like situations. That refers to the private sponsorship program we currently have in place for refugees resettled from overseas. We've put the sponsorship provisions for both family class and refugees resettled from abroad in part 1 of the bill, dealing with all the sponsorship provisions at once.

As you know, under our current private sponsorship for refugees resettled from abroad, a non-governmental organization may enter into an agreement with the federal government, a master agreement holder, in which sponsorships will be approved for individual refugees and their families, or else a group of private citizens—I think it's five or more—can come together and decide to sponsor a refugee and refugee family. So this enshrines in the legislation that provision for sponsorship. The exact rules as they are now will be found in the regulations.

**The Chair:** Is that repeated in part 2, in the refugee section, or are you trying to cover both off in this section? I'm just trying to bring some common sense to this. You said that this should flow really nicely and logically, so I'm just wondering why refugees all of a sudden are part of part 1.

**Ms. Joan Atkinson:** Refugees are all of a sudden part of part 1 because the rules for the actual processing of a permanent resident application for a refugee resettled from overseas are found in part 1. Part 1 deals with examination and selection outside of Canada, at the port of entry, and in Canada. A refugee resettled from overseas is coming to Canada as a permanent resident. That's why the rules for that are found in part 1.

**The Chair:** I knew there was a good reason. That's why I asked you the question.

John.

**Mr. John Bryden (Ancaster—Dundas—Flamborough—Aldershot, Lib.):** I'm looking at subclause 14(2)(e). Can you elaborate a little on what's meant by sponsorship "penalties"? Is this all enshrined in regulations or is this new in the bill? Where are we going on that? Because that's a major problem out there.

• 0945

**Ms. Joan Atkinson:** The right to sponsor is found in the bill, subclause 13(1): "a Canadian citizen or permanent resident may, subject to the regulations, sponsor a foreign national...". The regulations—paragraph 14(2)(e)—will define the specific rules for sponsorship. So, for example, with the financial criteria that must be met for sponsorship. When a sponsor has previously defaulted on a sponsorship, as in the current regulations, there will be in these new ones a prohibition against future sponsorship until such time as the obligations are met.

There will also be in the regulations new provisions. Individuals who have been convicted of domestic violence will be prohibited from sponsoring, as will persons who have been in default of other obligations to family members, specifically court-ordered child support payments or spousal support. If they are in default of those obligations they will not be permitted to sponsor other family members. The notion is that if you're not living up to your obligations to your current family, then you shouldn't be taking on new obligations by sponsoring more family members.

**The Chair:** Steve, and then Judy.

**Mr. Steve Mahoney:** Thank you, Mr. Chair.

I wonder if any detailed agreement is required. For example, you say that if it's a family member... And we're talking about sponsoring refugees —right?—family class.

**Ms. Joan Atkinson:** Yes.

**Mr. Steve Mahoney:** But the example you were just using, where a person convicted of family violence would not be allowed to sponsor another member of his or her family—

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**Ms. Joan Atkinson:** Correct.

**Mr. Steve Mahoney:** —as a refugee—

**Ms. Joan Atkinson:** No. That's not for sponsorship of refugees. That's only for sponsorship of family class members.

**Mr. Steve Mahoney:** Okay. Let me ask you about refugees then, because this refers to a group of Canadian citizens, a corporation or organization, etc.—the Mennonites out west, for example. And they would, very often by request from the government, take on sponsorship. Are there any agreements that we require these individuals or groups or organizations or corporations to sign, such that they would have to be approved in advance or live up to certain conditions?

**Ms. Joan Atkinson:** I'm going to ask Gerry to respond to that. We do have a fairly robust sponsorship agreement system, but I'll get Gerry to give you details.

**Mr. Gerry Van Kessel (Director General, Refugees, Citizenship and Immigration Canada):** We have two types of agreements. The first is with what is called the master agreement holder, for example the Mennonite Central Committee, whereby it is acknowledged right up front, when we negotiate the understanding and sign it, exactly what the obligations of each side are with respect to the sponsorship undertaking on behalf of refugees, whether they come to us with a name that they ask us to take a look at, or whether we go to them and say "We have someone in the camp here that needs a sponsor—would you be willing to do that?" That's one kind of agreement, and it avoids the need for us to set up a new agreement in each individual case.

There's also the possibility of what we call a group of five. A group of five can come together and then negotiate an agreement with us to sponsor an individual they believe to be a refugee somewhere overseas. We would take a look at that case and then determine, first, whether that person is a refugee or a person in a refugee-like situation, and then whether they meet the other requirements we apply to refugees and persons in refugee-like situations.

**Mr. Steve Mahoney:** And how would we check out who it is we're making these agreements with?

**Mr. Gerry Van Kessel:** In the case of the master agreement holders, they're normally quite well known to us. In addition to the well-known ones, like the Mennonite Central Committee, it may, for example, also be that a particular diocese in one part of the country has an agreement with us. So they have a long-standing arrangement with us, we know what their situation is, we know what their track record is in living up to the sponsorship undertakings they have.

It's more difficult when you run into a new situation, as in the case of the Afghan Association of Ontario, for example, with whom we've had a lot of discussions, a new group whose financial resources are more limited. Because for the first year they're required to provide the income support, which, in the case of government-assisted refugees, the federal government would provide. In the case of the groups of five, that is more difficult, but generally we find that there's not a problem.

• 0950

I don't recall that we go into any great detail looking at the backgrounds. Sometimes we find out second-hand about situations that we then take a look at, but by and large the system should be stronger than that. The system functions very well. It's quite exceptional that you have real difficulties emerging in this area of refugee sponsorship.

**The Chair:** Judy.

**Ms. Judy Wasylycia-Leis:** That gets to my question. I think we have to be careful about not making too big a deal about defaults on sponsorships. I can't imagine there's a big problem here. What would be the rate of... Can you give us an idea of the kinds of defaults you're talking about?

**Ms. Joan Atkinson:** Most of the concerns around default relate to the family class sponsorship, and it's quite a different situation. Under the private sponsorship for refugees, whether it's through a master agreement holder or a group of five, the obligation is for one year under those sponsorships for a refugee family. Under family class, the obligation is either ten years or three years. It will be changed to three years for spouses and partners in the new regulations that will accompany this. The concern relates to default on family class sponsorship.

I think that overall the default rate is very low. I think our figures are that in 86% of all family class sponsorships there is no problem. The default still relates to a relatively small proportion of the family class movement, but it is a serious issue. It's a serious issue for the provinces in particular, because when a sponsor defaults on their obligations to the family class, those family class immigrants are often then left destitute, and they must rely on social assistance.

What we're trying to do through our regulations is to ensure, first of all, that we're appropriately verifying the financial capability of the family member to sponsor. This is not just to save the taxpayer from family class members going on welfare but also to protect the immigrants and ensure that the family members who are being sponsored are going to come to Canada and have a chance to successfully establish themselves because their family members are going to live up to their obligations to them. So default is more of an issue, obviously, on the family class side.

We recognize that there always has to be the balance between the desire to be reunited with your family and the obligation that the sponsor has to provide for the care and support of their family members.

**The Chair:** John.

**Mr. John Bryden:** Is there any provision in subclause 13(2) for security screening of organizations that put themselves forward as sponsors?

I should just elaborate a little bit so you understand where the question is coming from. I had an incident that occurred in my riding that led me to suspect that a sponsoring organization is actually in the business of bringing in people from countries in exchange for money. Basically, they're engaged in a trade—diamonds, actually, in this particular case. Do we have provisions for handling that?

**Ms. Joan Atkinson:** I think, as Gerry indicated, when we're dealing with our master agreement holders, normally they're very well-known groups to us.

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With regard to groups of five, our primary concern is do they have the capability to care for the refugee and refugee family—financially, settlement arrangements, what are the supports this group will put in place in order to bring this refugee and family to Canada?

I think, as Gerry has indicated, we don't generally do security and background checks on every single member of that group of five. But if information such as you've indicated comes to our attention, then obviously we would do a thorough investigation and determine what was behind it.

I don't know whether you want to add anything, Gerry.

**The Chair:** Okay. We're on to division 2.

**Ms. Joan Atkinson:** Okay. All right.

**The Chair:** This is not a clause-by-clause.

**Ms. Joan Atkinson:** Correct.

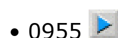
**The Chair:** No. The questions are very, very good, and the answers are even better. So, okay, Joan, division 2.

**Ms. Joan Atkinson:** We'll try to get some more information on that specific point for you, Mr. Bryden.

**Mr. John Bryden:** It was helpful.

**Ms. Joan Atkinson:** Okay. Division 2—examination. I'm on page 9, clauses 15 and 16. I would urge you to read these two sections together.

We have made some changes on the examination provisions from Bill C-31. I would point out to you subclause 15(1), the threshold for examination, "where the officer has reasonable grounds to believe that a foreign national may be inadmissible". That's a very important threshold.

• 0955 

Subclause 15(3) makes reference to "inspect any means of transportation bringing persons to Canada". That is a carryover from the current act.

Subclause 16(1), the obligation to answer truthfully, relates only to persons who are making an application under the Immigration Act.

Those provisions are key principles that have been enunciated in the legislation.

Division 3 makes reference to entering and remaining in Canada. I would point out on page 10, subclause 19(2), the right of entry of permanent residents: "An officer shall allow a permanent resident to enter Canada if satisfied following an examination on their entry that they have that status"—that they are indeed permanent residents.

I would point out on page 11, subclause 24(1), what we're calling the "temporary resident permit". This is in essence replacing the existing "minister's permit".

> 24.(1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit...

It is similar to our current minister permit provision.

I would also point out to you, on page 12, subclause 25(1). This is the authority for humanitarian and compassionate decision-making. The important change here from the current act is the addition of "best interests of a child". The minister or the delegate must take into account the best interests of the child directly affected in reaching decisions under this provision, and the minister or delegate may also make decisions based on public policy considerations, which is a change from the current act.

**The Chair:** Joan, with regard to clause 25, humanitarian and compassionate considerations, especially the rights of the child, as you know, when we did our study there were a lot of questions, especially by the Bloc but by other members who were very concerned with regard to jurisdiction, be it federal-provincial jurisdiction as it relates to adoption or children's... because that's provincial jurisdiction. I wonder if you could take a minute and perhaps go over that in some more detail, because I'm sure that question might come up in our travels or around this table.

**Ms. Joan Atkinson:** Let me speak to the adoption issue first.

Adoption in the immigration context will be dealt with in detail in the regulations under the family class. I should point out that there is sometimes some confusion here—as you know, because this committee did look at our previous citizenship bill. A lot of the international adoptions will be dealt with under citizenship when we get to citizenship legislation, because one of the changes we will be making, and the government is committed to making, through citizenship legislation is the right of a Canadian citizen to have an adopted child treated the same way as a natural-born child.

But there still will be international adoption under the Immigration Act for persons who are not Canadian citizens. For adoptive parents who are permanent residents, they will continue to deal with adopted children under the immigration legislation and the immigration regulations.

Our guiding principle for dealing with international adoption in both contexts is the bests interests of the child as per our obligations and our public policy objectives in dealing with children.

This particular provision, subclause 25(1), refers to humanitarian and compassionate decision-making. As you know, humanitarian and compassionate decisions are taken when an individual does not otherwise meet the requirements of the act and regulations: they don't meet family class requirements; they don't meet the selection criteria as an economic immigrant. This most often arises currently in in-Canada landings—that is, an individual marries a Canadian citizen or permanent resident and wants to remain in Canada. They don't meet the requirement that they must apply outside of Canada. It is the humanitarian and compassionate decision-making process that is used in order to overcome that inability to meet the requirements.

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We also in the current context—as will also be the case in the future—deal with individuals, both in Canada and outside of Canada, who don't meet the requirements, but there is a compelling humanitarian case to be made that they should be allowed to remain in Canada if they are here, or should be allowed to come to Canada if they are outside.

In all of those cases, what this provision does is to enshrine the principle that a decision-maker must take into account the best interest of the child, whatever the situation is in the context of that particular case. The best interest of the child is not defined, quite deliberately, because the circumstances will vary tremendously according to the particular situation. Every case, of course, is examined on its own merits and according to the individual circumstances.

**The Chair:** Is there a separate section in here on refugees and the best interest of the child—not as relates to citizenship for a permanent resident, but on the refugee side? Is that in clause 2? Or is this meant to cover also the refugee who has a Canadian child born here, though still the status of the individual has not been established? So when we're looking at humanitarian and compassionate return, because they've been refused, we take the best interest of the child into account in that instance.

**Ms. Joan Atkinson:** Any decision made on humanitarian and compassionate grounds is covered here.

**The Chair:** Okay.

Jean.

**Ms. Jean Augustine:** The criteria in public policy considerations—what are we talking about here? Are we talking about human resources? I'm just trying to find public policy statements. Is it the rights of the child—

**Ms. Joan Atkinson:** The public policy refers to situations where it makes sense from a public policy perspective for us to take certain action. Under the provisions of this clause, we can create classes where it makes sense under public policy grounds to do so. The best example is a “spouses in Canada” class.

As you know, in all of the documentation we have on this bill and the previous bill, it's our intention under regulation to create a new “in Canada” landing class for spouses. Under the existing humanitarian and compassionate provisions, we waive the requirement that you must apply outside of Canada about 15,000 times a year for spouses in Canada. Our intention is to create a new class on public policy grounds, because it makes good sense from a public policy perspective to create in regulation a new “in Canada” landing class for spouses and partners.

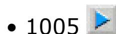
It's those sorts of provisions and those sorts of situations that we deal with when we talk about public policy.

**The Chair:** Steve.

**Mr. Steve Mahoney:** Joan, subclause 24(1) deals with the temporary resident permit. Could you give me an example of how an officer might reach the opinion that a temporary one is justified, when a permanent one is not? Then what happens if that temporary permit, as it says here, is cancelled at any time?

**Ms. Joan Atkinson:** That provision, as I said, replaces what we currently know as minister's permits. So, for example, with a visitor who may be otherwise inadmissible, where there are compelling humanitarian or compassionate considerations—for example, there is a family situation in Canada that the individual needs to come to Canada for—a decision-maker could make the determination that even though this individual is inadmissible to Canada, it's justified to give that individual a temporary resident permit with which to enter and remain in Canada for a specified period of time.

If, when that individual is in Canada, they violate the terms and conditions—for example, if they stay longer or engage in another activity, if they commit a crime, or they violate the terms and conditions of their status in some other way—that permit can be cancelled, because it is a discretionary tool, as the minister's permit is now. It is issued in exceptional circumstances to individuals who don't meet the requirements of the act or the regulations, to nonetheless allow them to come to Canada for a specified period of time.

• 1005 

Another example would be early admission on a permanent residence application. Where the processing is going to take several months and there is an urgent requirement on humanitarian grounds for the individual to be in Canada, a decision-maker could issue a temporary resident permit to allow that person to come to Canada early, even though the processing of their application has not been completed. The processing then gets completed, and they eventually get their permanent resident status.

**Mr. Steve Mahoney:** So there would no longer be minister's permits?

**Ms. Joan Atkinson:** In fact, under the current act, there is no such thing as a minister's permit. We call them minister's permits because they are issued under the authority of the minister. It's a delegated authority, but it's under the authority of the minister, so we call them minister's permits. What we've done in the new bill is to specifically enshrine something called a temporary resident permit.

**Mr. Steve Mahoney:** Mr. Chair, sorry, I know we're not doing clause-by-clause, but it's obviously critical for members of Parliament, who currently are required to give an undertaking on behalf of that individual. So that system is gone, and in this bill members of Parliament will no longer be able to influence a minister's permit?

**Ms. Joan Atkinson:** I wouldn't say that, Mr. Mahoney. That is an administrative provision, and I can't speak for the minister, but I think she quite likes it.

**The Chair:** In other words, in answer to your question, yes.

**Mr. Steve Mahoney:** Okay. Maybe when we get into the clause-by-clause we'll need to spend a little more time clarifying that, and particularly clarifying what happens in a situation where a temporary permit is cancelled. Because currently anyone who is in the slightest way creative can manage to stick around for about two years, going through the appeal process. So I'll wait until we get into the details of that.

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**The Chair:** As a following question, is it the intention of the bill not to have minister's permits in the future, or will you reserve the right to delegate or have minister's permits for other reasons? Is this meant to essentially replace requests for minister's permits of any kind?

**Ms. Joan Atkinson:** It is meant to replace minister's permits of any kind.

**The Chair:** But the question is, will there be such a thing as a minister's permit for exceptional, discretionary reasons other than the temporary resident issuing?

**Ms. Joan Atkinson:** The temporary resident permit replaces the minister's permit, as you know, and it will have the same flexibility that the current minister's permit has, in that you can use a temporary resident permit to allow someone to come to Canada for essentially any reason.

I should point out that we have in subclause 24(3) another one of those instructions of the minister that refers specifically to the issuing of these temporary resident permits, previously known as minister's permits. So the minister can give fairly detailed guidelines to decision-makers who will have the authority to issue these permits.

**The Chair:** Okay. Onward.

Oh, I'm sorry, Judy, did you have a question? I thought you were just waving to say hello.

**Ms. Judy Wasylycia-Leis:** No, I'm trying to figure out if this is the right time to ask a question about access to—I think it is clause 29 or 30. It seems to deal with education.

**The Chair:** She hasn't got there yet.

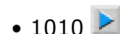
**Ms. Joan Atkinson:** I haven't got there.

**Ms. Judy Wasylycia-Leis:** Okay, sorry—I'll wait.

**The Chair:** I'll put you on the list.

**Ms. Joan Atkinson:** Okay. I'm going to move on to page 13, "Rights and Obligations of Permanent and Temporary Residents".

The critical piece here is that dealing with permanent residence and the residency obligations, clause 28. This is a significant change from the current legislation, where a permanent resident is deemed to have abandoned Canada as their place of permanent residence if they have been outside Canada for more than 183 days, which is about six months, in any twelve-month period, unless they can prove that they did not intend to abandon Canada as their place of permanent residence.

• 1010 

That provision is difficult to administer, because it deals with intention. We have replaced it with a very clear and objective standard of residency obligation, in subclause 28(2):

> (a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are
>
> > (i) physically present in Canada,
> >
> > (ii) outside Canada accompanying a Canadian citizen who is their spouse or partner...
> >
> > (iii) outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province,
> >
> > (iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner... and who is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province...

And these obligations, if you will, are much more objective than the current intent.

I would also point out that paragraph 28(2)(b) delineates the requirement that the foreign national only needs to demonstrate that they have been a permanent resident for less than five years, that they will be able to meet that residency obligation in respect to the five-year period immediately after they became a permanent resident. So we're only looking at the last five years when we try to determine the residency obligation.

I would also point out that on page 14, in paragraph 28(2)(c), there is a provision for humanitarian and compassionate consideration. Even if a permanent resident does not meet the physical residency obligation, or has been outside of Canada for one of the specified grounds, the decision-maker can take into account humanitarian and compassionate considerations, including, again, taking into account the best interests of the child.

**The Chair:** Joan, I can't tell you how much I think we should say a hallelujah for clause 28, in that it's replacing something that I think was causing all kinds of people to have to lie and whatever, because this 183-day situation was untenable for anybody. So I think this is obviously a move in the right direction, and it's going to give an awful lot of permanent residents a feeling whereby they don't feel guilty: if they have to go and visit, or leave the country for work or family, or everything else, it's going to be a little easier on them. After all, we're going to try to attract people, and I think this was one of those barriers that was causing Canada some difficulties.

**Mr. Steve Mahoney:** Mr. Chairman, somebody is going to bring it up, so I might as well.

You made a statement that was almost Freudian, I think. You said that if someone is outside Canada accompanying a Canadian citizen who is their spouse, and you used the exact term "or a partner", you didn't say common-law partner. Can you tell me what "common-law partner" for the purpose of this act means?

**Ms. Joan Atkinson:** Common-law partner obviously refers to the recognition of common-law partners, whether they be same sex or opposite

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sex. The specific definition of common-law partners will be in regulation, as the rest of the family class components will also be defined in regulation.

The definition will be consistent with Bill C-23, the definition of common-law partner that was passed in Bill C-23, the omnibus bill that changed all federal law with respect to recognition of common law and same sex.

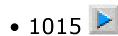
**The Chair:** Thank you for asking that question, Steve. You are absolutely right that it would have been asked by someone else, but I'm happy you did it. So thank you.

**Mr. Steve Mahoney:** So am I. Mr. Chairman, in part as a comment and in part to ask a question, I'd like to go back to something very briefly if I might.

In regard to subclause 25(2), do I take it that the minister may not grant permanent resident status under this particular case in the province in question, but could conceivably turn around and grant it in some other province, at which time the landed permanent resident could migrate to the province of choice?

**Ms. Joan Atkinson:** Subclause 25(2) makes reference to specific provisions in those agreements with provinces where the province has selection authority. Currently that is primarily Quebec, which under the terms of the Canada-Quebec accord has selection authority for immigrants who are not family class immigrants, or not assigned as refugee claimants.

This makes reference to that provision of respecting the selection authority of the Province of Quebec in this case. In humanitarian and compassionate decision-making, the province has to agree with it; the individual has to meet their requirements in that province if the person is being selected in that province.

• 1015 

**Mr. Steve Mahoney:** I understand that's what it means. So if the person does not meet the criteria in Quebec but would be acceptable in Manitoba, and meets all federal requirements, we could bring the person into Manitoba, at which time they could get on a plane and fly to Montreal and they're in Quebec.

**Ms. Joan Atkinson:** If the person intends to establish their residency in Manitoba, that's correct, we could indicate to them that they don't meet the Quebec criteria, but if they choose to reside in another province then they may meet federal criteria.

**Mr. Steve Mahoney:** For a week.

**Ms. Joan Atkinson:** Obviously our decision-making is based on what the intentions of the individual are when they make the application.

**The Chair:** Steve, I'm impressed. You obviously have been doing your homework over the weekend.

Onward to clause 29.

**Ms. Joan Atkinson:** All right, on page 14—actually I'll skip right now to clause 30, which I think is the provision you were most interested in.

Subclause 30(1) sets out the principle that a foreign national, other than a permanent resident, may not work or study in Canada unless they're authorized—that is, they have an employment authorization or a student authorization—except minor children. Subclause 30(2) says "A minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level." What this means is that a minor child in Canada, unless they're here simply as a visitor on a tourist visa, is authorized to go to school. This is meant to capture the notion that minor children of refugee claimants or minor children of temporary workers or students should be allowed to go to school without any barriers.

**The Chair:** Judy, did you have a question?

**Ms. Judy Wasylycia-Leis:** We keep hearing stories of situations where children are waiting a considerable amount of time while their inland claims are being processed and circumstances dealt with before they have access to primary education. I'm wondering if that is the case, and is that not a contravention of the UN Universal Declaration on the Rights of the Child? Shouldn't there be access to elementary education at all times under all circumstances?

**Ms. Joan Atkinson:** Certainly what we have in clause 32 is a recognition of that principle, that a minor child should have access to education, and that's why it's enshrined in the legislation. We don't have it in the current legislation, so we deal with those situations on an individual basis with the school boards or the schools in question when it comes to our attention. We have in fact been dealing with certain school boards and jurisdictions in different provinces where these difficulties have arisen.

We have set up a system now in the Ontario region, for example, where we are issuing to refugee claimants and their family members an acknowledgement of intent to claim refugee status. School boards are accepting that document as evidence of the child's status in Canada and then hopefully clearing the way for them to attend school. In future, with this provision, there should be no question, because the legislation allows them to attend school regardless.

**The Chair:** In other words, it does what you want it to do, and it's probably automatic.

**Ms. Joan Atkinson:** Yes.

**The Chair:** It's the principle that if there are children involved, then we expect them to be nourished and educated while paperwork is being finalized, right?

**Ms. Joan Atkinson:** Correct.

**The Chair:** All right.

John.

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**Mr. John Bryden:** I was curious, because in that particular clause you changed the wording from the original clause in our previous bill, Bill C-31. What was the nature of the change to the wording? What were you trying to do?

**The Chair:** I'm also impressed that you've done all of this homework.

**Mr. John Bryden:** I have them both here, paragraph by paragraph.

**Ms. Joan Atkinson:** What we were really getting at here is we wanted to make it clear that for an individual who was here in Canada on a tourist visa, access to the Canadian education system is not wide open for people who arrive simply as tourists in Canada and then decide that they'd like to drop the kids off to go to school, and take off.

What we really wanted to get at here was precisely the sort of situation that you mentioned, children of refugee claimants. Obviously we didn't want to inadvertently or otherwise preclude children of temporary workers who are here with employment authorizations for some period of time often, or children of people who are here on student authorizations. We didn't want to inadvertently prevent them from having access to school either. So it was to clarify what our real intention was here.

**The Chair:** It's probably because you asked the question the first time, John, and they took your representation very seriously and redrafted this much clearer language. So thank you in advance.

**Ms. Joan Atkinson:** We listened to all comments—

**The Chair:** It's amazing what we can do.

**Ms. Joan Atkinson:** —in terms of coming back with our new bill, new and improved bill.

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**The Chair:** Thank you, John, and we look forward to further interventions.

**Ms. Joan Atkinson:** Okay.

I should point out on status documents that this provision in subclause 31(1) provides the authority to issue status documents to permanent residents. And in the case of permanent residents, as you know, we are working on issuing a permanent resident card to replace the current immigrant visa and record of landing, which is a document prone to fraud and misrepresentation. This will provide permanent residents with a document that will permit them to be able to travel more easily in and out of Canada.

Also, I should point out—and this is a change—we talk about "protected person". We're here talking about refugees and persons in refugee-like situations, and primarily refugee claimants. There have been concerns that refugee claimants don't have any document and are unable to get travel documents. What this enshrines is the provision that a person who's been determined to be a refugee, under the refugee determination system, will be provided with a status document. That status document will then allow them to apply for a convention refugee travel document. So this is a change that we made in response to some of the concerns and criticisms on that front.

**The Chair:** Can I just ask, with regard to status documents, either clause 31 or subclause 31(3), as you said, those permanent resident documents, in their present form—or if in fact one had a refugee... From time to time, as you know, permanent residents have to travel. And until they get an actual passport, in some cases it's very difficult, not only for them to access other countries—especially if they had flown or taken off from that country because they were refugees but need to get there because their parents or family members are there or some other emergency has come up—but also to get back into the country. Sometimes it is very, very difficult.

**Ms. Joan Atkinson:** Yes.

**The Chair:** Is this travel document, or the new card, going to make it easier for those people who have yet to become citizens to go abroad and come back into their own adopted country?

**Ms. Joan Atkinson:** The short answer is yes. For refugees, when they're issued a convention refugee travel document—which is issued by the passport office, not by the immigration department—the convention refugee document is restricted to travel, in terms of travel to the country from which they fled. A permanent resident card, when they become a permanent resident, does not limit their travel outside of Canada. And for any permanent resident, this card will certainly facilitate their return, because it will be a much better document to show to airlines or other transportation companies to prove that they are permanent residents and have the right to enter Canada.

**The Chair:** But can I just ask you a question? By the time we get this thing passed, to the time we get this technology, and all of these people who have permanent resident documents now... What's the timeframe, in terms of implementing such a very good idea?

**Ms. Joan Atkinson:** The implementation will be phased in, in the sense that our intention will be to issue it first to new immigrants, those who are arriving, and then eventually to be able to encourage other permanent residents to obtain the card.

Now, it's not an absolute requirement that a permanent resident have the card. The card indicates their status, but it is not the absolute and final proof of their status. And that's an important distinction, because there have been concerns raised about what happens when the card expires, if the permanent resident loses their status, and so on. That is not the case. The card is indicative of their status. It will be necessary for permanent residents when they travel outside of Canada in order to get back into Canada to show to an airline company. But even if they don't have the document, subclause 31(3) of this provision allows us to issue a permanent resident a facilitation document to allow them to get back to Canada if they're outside of Canada and they don't have the card or their card has expired.

Either they comply with the residency obligations so they're definitely still a permanent resident—we've made a determination that, on humanitarian and compassionate grounds, they're still a permanent resident—or they were physically present in Canada at least once in the last year. We will give them the facilitation document to allow them to get back to Canada, even if the card has expired.

So if the card has expired, it doesn't mean you've lost your status.

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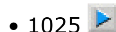
• 1025 

**The Chair:** Judy.

**Ms. Judy Wasylycia-Leis:** I just want to ask a question on resident cards. What would the department's response be to the Canadian Bar Association's critique of these provisions, and specifically their statement that says:

> Poorly structured requirements for renewal of permanent resident cards... will lead to expensive, time consuming and unnecessary determinations, faulty denials of entry and faulty assessments of inadmissibility.

**Ms. Joan Atkinson:** In Bill C-11, I think we've made changes from what we had in Bill C-31.—

**Ms. Judy Wasylycia-Leis:** This is based on their critique of Bill C-11.

**Ms. Joan Atkinson:** Yes, and to deal with some of those concerns, we think we have a better process outlined, if you will, in Bill C-11.

I pointed out before that permanent residents have a right to enter Canada if they're still permanent residents. I didn't point out right at the beginning that we have a definition of “permanent resident”. A “permanent resident” is a permanent resident until such time as a final determination on his or her status is made under clause 46 of the act. For example, for an individual who has been outside Canada and the card has expired, that person applies to a visa office overseas for a facilitation document to get back to Canada. The visa officer can decide whether the person meets the residency obligation, there are humanitarian and compassionate considerations, or the person has been in Canada at least once in the last year, regardless of whether the residency obligation is met. The officer will then give a facilitation document to allow the person to get back to Canada. A final determination on loss of status is not made until after the person has filed an appeal and that appeal has been heard and determined.

We think the changes we've made to Bill C-11 provide ample protection for permanent residents to assure them that they can get back to Canada, that they have the right to enter Canada, that they have the right to have their case heard, and that they have the right to an appeal to an initial determination made on their status. A final decision is not made until after their appeals have been exhausted.

**The Chair:** We're going to hear from the bar probably on Thursday, Judy, so you might want to ask certain questions on their behalf, or ask them specifically.

Joan, you raised something that all of a sudden... You might want to clarify it, because... You'll get to clause 46, I know, but you've just said someone is permanent until such time that they have final determination. Clause 46 talks about loss of status. In a sense, you are permanent and have status until someone has taken it away from you.

I think there's a big difference between saying you are permanent and have status until someone takes it away from you and the idea that you have status until we tell you you have final status. Which is it? I'm a little concerned if it's the latter that says you have status until we tell you you have final status. No wonder people would start to get nervous. In other words, we would take away their status if they did something wrong, or if they in fact became a Canadian citizen.

**Ms. Joan Atkinson:** Well, we can turn to clause 46—

**The Chair:** No, maybe you can address that at clause 46 then.

**Ms. Joan Atkinson:** Okay, we'll address it when we get to clause 46.

**The Chair:** All right.

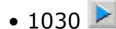
Is there anything more on division 4?

**Ms. Joan Atkinson:** Division 4 is the section that deals with inadmissibility.

I would first of all point out that what we've done in this section is to hopefully make the grouping of inadmissibility provisions more logical and clearer. What we've also done that is different from what is in the current act is to use the same inadmissibility criteria for visitors, prospective immigrants, permanent residents and so on, where indicated. That's unlike the current act, under which we have different provisions for people who are in Canada and different provisions for people who are applying to come into Canada. We've grouped them together as all the same in this provision. Let me quickly go through them with you.

Security grounds are outlined in clause 34. Human or international rights violations are in clause 35. And I would point out that in clause 35 there is a new inadmissibility provision when compared to the current act. On page 17, in paragraph 35(1)(c), it reads:

> being a person, other than a permanent resident, who is described in the regulations and who is a national or a country or a representative of a government or country against which Canada has imposed or has agreed to impose sanctions in concert with an international organization of states or association of states, of which Canada is a member.

• 1030 

This allows us to deal with sanctions we have agreed to impose against governments or countries, in concert with the United Nations, in concert with the Commonwealth, in concert with the Francophonie or other international organizations or associations. We have not had this provision. We don't have it currently. This gives us a legal basis on which we will be able to deliver on our commitments and obligations in terms of sanctions against countries.

**The Chair:** This is the legal basis for us to do it.

**Ms. Joan Atkinson:** That's correct.

**The Chair:** The operative side, of course, is by regulation. As you know, in the case of South Africa, where we were in fact part of those

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sanctions, all of a sudden we took them off in conjunction with other countries. We would do that by regulation, but this gives the legal basis to do it.

**Ms. Joan Atkinson:** That's correct, yes.

**The Chair:** Steve.

**Mr. Steve Mahoney:** Just to help me understand this, if we're part of sanctions against Iraq, for example, is this saying any Iraqi national is inadmissible to Canada?

**Ms. Joan Atkinson:** It depends on the nature of the sanctions. If there are travel sanctions included in those sanctions... Normally, travel sanctions are fairly specific, in that they are either targeted against representatives of the government at certain levels—they will say senior officials are not permitted to travel—or they may be more general and relate to nationals of that country. It depends very much on how the sanctions are specifically determined. Obviously, that is normally done by the UN or the Commonwealth or whichever organization it is that's imposing the sanctions.

**Mr. Steve Mahoney:** But to stay with the example of Iraq, if the sanctions are imposed supposedly to punish the leadership of the country but they are causing hardship on the people of that country, such as an Iraqi national who is perhaps being persecuted or whatever, they can claim refugee status separately. But are we saying here that they *are* inadmissible, as opposed to the idea that they *may be* inadmissible?

**Ms. Joan Atkinson:** If the sanctions that are imposed against Iraq include travel sanctions against nationals of that country, then, yes, they would be inadmissible.

**Mr. Steve Mahoney:** Will that be outlined in regulations?

**Ms. Joan Atkinson:** Yes, it will, in terms of the specifics and in accordance with, as I said, whatever the specifics are of the sanctions that are imposed.

Turning to clause 36, which covers serious criminality, again there are some changes here from what is in the current act. In subclause 36(1), foreign nationals—this would include permanent residents—are inadmissible on grounds of serious criminality if they have been convicted of an offence in Canada that is punishable by at least ten years, and for which a term of imprisonment of more than six months has actually been imposed. In the current act, that applies to imprisonment or an offence that may be punishable by five years or more and six months. So the threshold is somewhat higher in this bill for serious criminality and for how we define serious criminality. That's an important concept when we talk about appeal rights and other things.

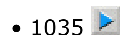
On page 18, I'd bring to your attention paragraph (d).

**The Chair:** Just before you get to that one, we would agree, obviously, that the criminality issue and inadmissibility under this section are paramount to restoring confidence in the system, even though 99% of the system works well.

I guess it all comes down to the enforcement side. How are we to know if someone has been convicted in another country for a crime that equates to ten years or more as a Canadian crime? That information is held someplace in that other country, supposedly. How does it get here when the person shows up at our doorstep? I'm sure the technology can do this and that the prescreening system will help. But that's the point. Even if we have these great laws saying someone is not going to get into this country if he or she has a criminal record, how do we make sure we know that information at the earliest possible moment so we can take corrective measures? That's what the issue really is.

**Ms. Joan Atkinson:** There are perhaps a number of ways. First or all, when an individual makes an application, they either appear at a port of entry or they submit an application through one of our offices overseas. If the individual is honest and advises us that he or she has a criminal conviction, that's the first way we may pick up that information.

**The Chair:** Fat chance of that happening.

• 1035 

**Ms. Joan Atkinson:** It doesn't happen too often—

**The Chair:** No, I don't think so.

**Ms. Joan Atkinson:** —but it does sometimes, where people are honest and tell us they've had a criminal conviction.

Secondly, they are required, when they make an application for permanent residence, to submit documentation including police certificates. So in some cases we pick up this information with documentation the individual has submitted.

Thirdly, we have links with our partners, specifically the RCMP and CSIS, the Canadian Security Intelligence Service. On criminality, we have in Canada, through our case-processing centres, for example, an electronic interface with the RCMP where we submit to the RCMP tombstone data—name, date of birth, and so on—and they do a check against their indexes to see whether there's any information on an individual.

Fourthly, when information is available through Interpol, for example, and that information is shared with us, with Immigration Canada, we then normally put that information on our lookout, into our database. That information, the lookout information, as we call it, is available to customs officers on the primary inspection line at ports of entry and is obviously also available to immigration officers wherever they are in the world, either in Canada at ports of entry, or at our visa offices abroad.

Finally, sometimes we get tips. We get what we call poison pen letters, anonymous tips or sometimes not anonymous, people writing to us or calling us and saying, “Did you know this individual who has applied to immigrate or applied for a visa has a criminal conviction?” We will try to ascertain the bona fides of that tip and determine whether or not we should do some investigation.

So it comes to us in different ways.

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**The Chair:** Okay.

**Ms. Joan Atkinson:** On page 18, paragraph 36(2)(d), is a new provision from the current act:

> (d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

These are new transborder offences, someone who is committing an offence as they enter Canada—possession of narcotics or trafficking, or drunk driving, those sorts of things. We would be able to declare them inadmissible rather than waiting until they had actually been convicted of a criminal offence.

**The Chair:** What criminal offence are you talking about? I think that was the question. Are we talking about credit card fraud? What are we talking about? It says “prescribed by regulations”.

**Ms. Joan Atkinson:** Correct.

**The Chair:** Are your regulations going to be very specific as to which crimes we are talking about? Of course, trafficking in drugs, carrying firearms... there are certain things, obviously, that are pretty clear.

**Ms. Joan Atkinson:** Right.

**The Chair:** Where does the list stop?

**Ms. Joan Atkinson:** The regulations will specify the Criminal Code, the Narcotic Control Act...

Dick, I don't know whether you want to expand on that. Will we have specific sections of the Criminal Code or the Narcotic Control Act in regulations?

**Mr. Dick Graham (Acting Director, Legislative Review, Enforcement, Citizenship and Immigration Canada):** At this point, the answer is no. The decision was made at one point that we would simply bring in the Criminal Code, because picking out and saying that some offences are —

**The Chair:** An impaired driving charge, for example, is under the Criminal Code. Right?

**Ms. Joan Atkinson:** Correct.

**The Chair:** If someone wanted to apply, and five or ten years ago, in another country, had an impaired driving charge, as an example, not to condone drinking and driving, or whatever—

**Ms. Joan Atkinson:** Oh, okay.

**Mr. Dick Graham:** Those are already inadmissible in certain cases... and we have ways of dealing with them to allow them in.

What we're talking about here is the person who commits the crime basically upon entering Canada, who is drunk when he shows up at the port of entry, or the person who is discovered by customs to have narcotics in his vehicle as he's coming into Canada. In these cases, the problem now is that they show up at the ports of entry, and although they might be guilty of an offence, we can't make them inadmissible to Canada.

**The Chair:** Okay, I'm sorry, perhaps it should be in bold writing there, “on entering”.

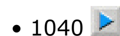
So you're saying as they're coming across they might be committing a crime under our Criminal Code.

**Ms. Joan Atkinson:** That's right.

**The Chair:** Okay.

**Ms. Joan Atkinson:** In dealing with the situation of people who might have been convicted of a drunk driving offence, for example, several years ago, in fact the next clause speaks to that issue. I refer you specifically to paragraph 36(3)(c), which talks about rehabilitation.

As you know, our current act has provisions to allow people forward who may have been convicted of a criminal offence that's equivalent to an offence in Canada, where more than five years have elapsed and they have satisfied the minister that they have rehabilitated themselves. They are no longer inadmissible. This provision allows us to regulate and to prescribe conditions where a person may be considered to be rehabilitated.

• 1040 

For example, it is our intention to have deemed rehabilitation—that is, if certain offences happened a certain number of years ago, the individual doesn't have to go through a process to obtain rehabilitation. We will deem that they have been rehabilitated simply through the passage of time and the fact that presumably they've had no further convictions. We will hopefully deal with a lot of the drunk driving convictions, people who had been convicted of drunk driving many years ago, through deemed rehabilitation procedures.

**The Chair:** Okay.

**Ms. Joan Atkinson:** Clause 37 deals with organized criminality. I would point out paragraph 37(1)(b), which is new. That is organized criminality:

> (b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

So those are new inadmissibility provisions specifically directed at that form of organized crime.

**Mr. Steve Mahoney:** I want to deal with paragraph 36(3)(b). I'm curious that everything about inadmissibility refers to convictions and yet we specifically say it does not apply where there has been a final determination of an acquittal. Why would we even know that if there was not a conviction? The person was charged, the person was tried, the person was acquitted. Why would that show or why would we even concern ourselves if we're only dealing with convictions?

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**Ms. Joan Atkinson:** I'll let Daniel answer that one.

**Mr. Daniel Therrien:** I think the scenario we envisage here is basically one where there has been a conviction at trial but then an acquittal after an appeal.

**Mr. Steve Mahoney:** Shouldn't we say that?

**Mr. Dick Graham:** It actually goes a little bit beyond that too, and that is when we're dealing with people who are in the acts and omissions sense of people committing crimes. In other words, in certain countries where the person, for example, has committed a crime and fled to Canada, we want to make sure that this person isn't inadmissible to Canada just on the terms of the act they committed in the other country.

So we have provisions for that, but we're basically putting up a wall to the people at the ports of entry, our officers, and saying that if somebody has been acquitted of this offence in the past, you can't consider that as an act they've committed. If a jury or a judge has decided in another jurisdiction that this person hasn't committed that crime, then let's not take it upon ourselves to make that decision.

**Mr. Steve Mahoney:** Does that not open a really grey area in terms of being innocent until proven guilty and an issue where, for example, the prosecutor decided not to proceed for lack of evidence and the case was thrown out of court? There's no acquittal. The charge was certainly registered. We see cases where people are falsely accused but an actual acquittal is not registered, and they can carry that stigma the rest of their life.

In allegations of sexual abuse, there are cases all the time where the actual charge is not proceeded with, so there's no conviction and there's no acquittal.

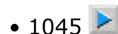
I'm concerned that we're putting our officers in the position where they're being asked to adjudicate in a very grey area here and say you were charged with that, so we're not going to let you in the country.

**Mr. Dick Graham:** Yes, it is a grey area, and part of the thing is that for a finding in this area, normally we take it beyond the immigration officer. It's an adjudicator at a hearing who hears these cases, because we recognize that it's a grey area and we want somebody looking at the evidence and making a reasoned decision. So that's our way of handling it. The thing is, it has to be a fair process.

**Mr. Steve Mahoney:** Maybe we'll have to get into that in more detail in clause-by-clause.

There's another one of those. Somebody is going to ask about it, so I might as well.

Paragraph 36(3)(e) says inadmissibility may not be based on a contravention under the Contraventions Act or the Young Offenders Act. Can you talk to us about that? What's the philosophy there?

• 1045 

**Mr. Dick Graham:** The Young Offenders Act is basically to acknowledge the fact that young offenders in Canada aren't recognized as having a criminal record. That's the reason that's not in there. As for the Contraventions Act, contraventions are basically minor—

**Mr. Steve Mahoney:** What if they were charged under the Young Offenders Act with a violent crime that wound up in adult court, and their conviction was registered in adult court?

**Mr. Dick Graham:** Then the conviction is recorded in the criminal system, it's not under the Young Offenders Act. That's where the difference is. Contraventions or minor offences basically are handled like a ticketable offence—the person gets a ticket, as opposed to a conviction. They don't go to court. In those cases—

**Mr. Steve Mahoney:** But clearly, violent young offenders convicted would be inadmissible.

**Mr. Dick Graham:** That's right, if they're convicted in an adult court.

**The Chair:** Okay.

**Ms. Joan Atkinson:** All right. Page 19, clause 38 deals with health grounds. What is new in Bill C-11, and new from Bill C-31, is bringing into the act the principle, on health grounds, that inadmissibility on grounds of excessive demand does not apply in the case of a foreign national who is a member of the family class—spouse, common-law partner, or child, within the meaning of the regulations—or is a refugee being resettled from abroad who has applied for a permanent resident visa as a convention refugee or a person in similar circumstances, or is a protected person, along with the accompanying dependants of those people. As you know, when we tabled Bill C-31 we talked about putting this in regulation. In Bill C-11 we have brought that principle and put it directly into the act.

**The Chair:** Mr. Bryden.

**Mr. John Bryden:** I have a lot of concern about this. I take it what we're saying in this addition, looking particularly at the case of common-law partners, is, if you have a common-law partner in a situation where the other partner has a disease like AIDS, or Ebola virus, or any of these things, that person would be allowed to enter Canada.

**Ms. Joan Atkinson:** The exemption is only from the excessive demand provision, not the public health or public safety provision. So members of the family class who are spouses, common-law partners, children, or refugees resettled from abroad will still be required to meet the public health provisions. So individuals with active tuberculosis, Ebola, and so on, if those conditions are deemed to be threats to public health, would not be permitted to come forward to Canada. So it's only for excessive demand.

**Mr. John Bryden:** Okay. To elaborate on that a bit, how would AIDS fit into that? Because we do have a situation where certain common-law partners are known to engage in risky sexual activity. I remember from our omnibus bill that common law was defined as a relationship of a sexual nature.

**Ms. Joan Atkinson:** Conjugal.

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**Mr. John Bryden:** A conjugal nature—right, I remember that.

I come back to my point: allowing for the fact that it applies only to paragraph 38(1)(c), does that mean that people whose common-law partners may have active AIDS, or if not AIDS, then HIV—if you want to make the distinction, because AIDS could be regarded as a potential excessive demand on the health system, whereas HIV might not be... How do you work that?

**Ms. Joan Atkinson:** As I know you can appreciate, testing for HIV is a complicated area. On public health issues we take advice from Health Canada, because they are the experts in terms of public health. On the specific issue of routine testing on public health grounds, we are working with Health Canada in looking at modernizing our immigration medical system, determining whether there are additional routine tests we should be putting into place, which will include HIV, and others too, such as hepatitis B, such as Chagas' disease—potential public health issues in those areas of the world where we select our immigrants and refugees.

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On the excessive demand grounds, individuals who may have AIDS or may be HIV positive may pose an excessive demand on health and social services. Every case is examined on its own circumstances, and an evaluation is made on what the particular prognosis is, the nature of the disease, the status of the individual, and the treatment the individual will need to receive in Canada. So individuals who are HIV positive may or may not cause excessive demands. The issue of public health is one we are currently working on with Health Canada, and we expect to be able to look at having new routine testing for HIV and other diseases in the near future.

**Ms. Judy Wasylycia-Leis:** Can you give us the definition of “excessive demand”?

**Ms. Joan Atkinson:** The definition will be put in the regulations. We will be moving from the current system, which is based very much on information and the knowledge of the medical officer, to an objective, cost-based model. The model will have a threshold. That threshold will be based on the annual per capita health and social service costs incurred by Canadians. These data are readily available from public sources. They are collected by organizations, including StatsCan.

The cost threshold will be based on the average annual cost, the nature of the disease or condition the individual is afflicted with, and the treatment that individual is likely to need in Canada as a result of that disease or condition, looked at over a five-year period. In certain cases the medical officer will be empowered to look beyond five years and to look at ten years because for some diseases and conditions it takes a longer period of time for the full impact of that disease and condition to be known and therefore the impact on health and social services. The medical officer will look at the nature of the treatment and the cost of that treatment in Canada and compare it with the threshold. If it's above the threshold, the person is inadmissible. If it's below the threshold, the person is admissible.

**Mr. John Bryden:** Can I make a suggestion with regard to that?

**The Chair:** John, we're going to get into clause-by-clause consideration, but right now it's just questions.

**Mr. John Bryden:** Okay. Let me phrase it another way, then.

Say you had somebody who's sponsoring under the family class a relative or a common-law partner who has a heart defect. This is not a risk to public health, but it would be an enormous burden on the health care system. This would allow that type of person to enter the country no matter what the cost of the repair on the public health system.

**Ms. Joan Atkinson:** That's correct.

**Mr. John Bryden:** It's too bad it doesn't say “may” instead of “does”. If it said “may not apply”, you might not have that problem.

**Ms. Joan Atkinson:** I should point out some of the policy intentions behind this one. Currently, as you know, family class sponsors have the right of appeal, and they will continue to have that, obviously, under the new bill. When we refuse on medical grounds a family class sponsored spouse, dependent child, or common-law partner in the new family class, most of the time that person will appeal that decision on humanitarian and compassionate grounds. In the vast majority of cases the Immigration Appeal Division finds in favour of the applicant on humanitarian and compassionate grounds because it is a reunification of spouses, partners, common-law partners, and children with their parents.

When there is an allowed appeal, we issue an immigrant visa and record of landing, and the person comes to Canada as a permanent resident. In other situations we will issue a minister's permit on humanitarian and compassionate grounds despite the fact the individual has a disease or medical condition that may cause excessive demands. This is in recognition in a sense of the reality of what happens in the vast majority of cases in the family class now.

**The Chair:** Excuse me, John, you're into debate.

**Mr. John Bryden:** Of course it's debate.

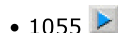
**The Chair:** We'll welcome you back as a non-permanent member of the committee to discuss this very matter. Do you have permanent status here, or can we make you inadmissible based on excessive use of the committee's time?

**A voice:** I don't think we have a clause in the bill, Mr. Chairman.

**The Chair:** I should point out—and I'm just as guilty as anybody else here—

**Mr. John Bryden:** Yes, you are, Mr. Chairman.

**The Chair:** —that we have 10 minutes and we're only 20% of the way through the bill. I want to continue, because we're going to be hearing witnesses on Thursday. We will continue this hopefully until 12, because we have to get through this. I promise not to ask as many questions myself.

• 1055 

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**Mr. John Bryden:** Yes, right.

**The Chair:** We need to get on with it.

**Ms. Joan Atkinson:** We are at your disposal, Mr. Chairman.

**The Chair:** Thank you.

**Ms. Joan Atkinson:** Moving along, I'd like to point out clause 40, which is a new inadmissibility provision, and this is on misrepresentation. It says:

> (1) A foreign national is inadmissible for misrepresentation... for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

So it's misrepresentation of a material fact.

Under subclause 40(2) the person is not inadmissible forever. They are inadmissible for a period of two years following, in the case of a determination outside of Canada, a final determination of their inadmissibility.

I'm now going to move to division 5, clause 45 on page 22 and to point out that in the current act we have inquiries. Dick made mention of inquiries when we're dealing with the grey areas of criminal inadmissibility. What we have in Bill C-11 are admissibility hearings by the immigration division. It is in essence the same as an inquiry, but we are now calling them admissibility hearings.

Next is clause 46 on loss of status. We've already had some discussion of this in the context of the loss of permanent resident status. It states:

> (1) A foreign national loses permanent resident status
>
> > (a) when they become a Canadian citizen;
> >
> > (b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation...
> >
> > (c) when a removal order made against them comes into force; or
>
> (d) on a final determination... to vacate a decision to allow their claim for refugee... determination...

So clause 46 outlines the reasons a permanent resident can lose permanent resident status. Until such time as one of these things happens under clause 46, they are still a permanent resident.

**The Chair:** I just want to clarify that they are a permanent resident until it's taken away from them. If that's the principle, I think that's a good one. But when it starts talking about final determination, it's getting specific. It seems to say you have temporary or conditional permanent resident status until such time as we say you have final determination, and that is troubling. If that's not the intent—I don't want to get into specifics—maybe you can you think about that, and we'll move on.

**Ms. Joan Atkinson:** Okay.

On page 23 it talks about removal orders. As you know, the current act talks about three different types of removal orders: deportation, exclusion, and departure. In this bill we talk about removal orders just as one type of removal order. The regulations will have more details in terms of the differences, but we're talking about one type of removal order in the bill.

I would point out on page 24 a new provision under clause 51, which says:

> A removal order that has not been enforced becomes void if the foreign national becomes a permanent resident.

That's a clarification of a principle that's new.

The regulations dealing with removal orders will also deal with the conditions and stays of removal. This gives us clearer authority. I would point out specifically paragraph 53(d), which says:

> ...the circumstances in which a removal order may be stayed, including a stay imposed by the Minister and a stay that is not expressly provided for by this Act;

This gives us the regulatory authority to deal with stays that are currently done administratively. For example, for removal to certain countries where there are adverse conditions and where we do not want to remove individuals, this now provides us with the regulatory authority to do so.

Next is division 6, on detention and release. The principle in subclause 55(1) is new.

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Subclause 55(2) says:

> An officer may, without a warrant, arrest and detain a foreign national, other than a permanent resident or a protected person.

This clarifies the rights of permanent residents—that they cannot be arrested without a warrant. It brings that threshold clearly into the act.

I should also point out that paragraphs 55(2)(a) and (b) talk about the grounds for detention, which are the same as in the current act: the officer has reasonable grounds to believe the individual is inadmissible, is a danger to the public, or is unlikely to appear for an examination; or the officer is not satisfied of the identity of a foreign national. Those are the grounds for detention.

Let's look at page 27, clause 60, which deals with minor children in detention. This stipulation of Bill C-11 does not appear in Bill C-31:

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> For the purposes of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria.

So that principle is enshrined in the act, as opposed to in the regulations, where it would have been under Bill C-31.

Okay. I'll go quickly here. In division 7, dealing with right of appeal, I would point out subclause 64(1) on page 28. No appeal for inadmissibility—

**Mr. Steve Mahoney:** I left the room, and you've really moved along.

**The Chair:** Do you want to try leaving again, Steve?

**Ms. Joan Atkinson:** No comment.

> No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor if the foreign national has been found to be inadmissible on the grounds of security, violating human or international rights, serious criminality or organized criminality.

Serious criminality is defined in subclause 64(2): "must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years".

Foreign national includes permanent resident in this context. So these provisions specify that there are no appeal rights for a foreign national, including a permanent resident, if they are inadmissible on those grounds. Serious criminality is defined as ten years of imprisonment possible, and at least two years imposed.

Similarly, subclause 64(3) states that there are no appeal rights if there has been fraud and misrepresentation according to our fraud and misrepresentation inadmissibility criteria unless the foreign national in question is a sponsor's spouse, common-law partner, or child. Otherwise, there are no appeal rights.

Again, paragraph 67(1)(c) on page 29 deals with the best interests of the child. That paragraph enunciates the principle that the best interests of the child must be taken into account in the context of appeals.

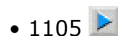
In division 8, "Judicial Review", what's different here from the current act is in subclause 72(1), which states:

> Judicial review by the Federal Court with respect to any matter—a decision, determination or order made, a measure taken or a question raised—under this Act is commenced by making an application for leave...

This imposes a leave requirement on visa officer decisions overseas. This is not the case in the current act. This is the provision in this act that imposes that leave requirement. But in response to some of the concerns about the difficulty of filing the documents in the Federal Court when you're dealing with an application overseas, we've made a change from Bill C-31 in paragraph 72(2)(b), where we say that in the case of a matter arising outside of Canada the notice of application shall be served within 60 days to give a longer period of time for the lawyers to file the leave application in Federal Court.

In division 9, I would point out clause 77 on page 33. This is the security certificate process. Clause 77 tells us that we have made the security certificate process that we currently have for non-permanent residents the same for permanent residents. That is, two ministers—the Minister of Citizenship and Immigration and the Solicitor General—may sign a certificate saying that a foreign national is inadmissible on grounds of security, human rights violations, serious criminality or organized criminality and refer it to the Federal Court trial division, which shall make a determination.

There is no involvement of the Security Intelligence Review Committee, which is the current practice for permanent residents. There is the involvement, as always, of the Federal Court judge in making a determination.

• 1105 

Also, clause 81, which is new, says that if a certificate is determined by the Federal Court to be reasonable under subclause 80(1), then that certificate becomes a removal order. So we streamline the process for removing those individuals, and the certificate also serves as a removal order.

I skip now to clause 86 on page 36. What is new here is non-disclosure of sensitive information in an admissibility hearing. Currently we have this provision for Federal Court when we're dealing with a security certificate situation. What we have in this bill is the ability to protect sensitive information in an admissibility hearing in front of the immigration division of the Immigration and Refugee Board.

Division 10 contains general provisions. I would point out to you page 38, clause 92, "Material Incorporated in Regulations", which allows us to incorporate the results from third parties, for example, the results of language testing for economic immigrants. We can use those results in a context of decision making under the selection criteria.

I would also point out clause 94, the annual report to Parliament. This is new—a new and improved, expanded annual report to Parliament. The current act obliges the minister to report on the number of immigrants we would forecast receiving in a given year. The new annual report obliges us to report on more than just the immigration levels, including activities and initiatives concerning the selection of foreign nationals, the number of foreign nationals, the number of temporary resident permits, and the number of persons granted permanent residence under H and C guidelines. So that's a more expansive report to Parliament.

And that's part 1.

**The Chair:** So far, so good. Yes, Steve.

**Mr. Steve Mahoney:** I want to ask a question on the section where there is no appeal allowed. You've defined a number of areas where the appeal may not be allowed. Have you looked at not allowing an appeal when someone has entered the country under a minister's permit and overstayed the expiration of that permit? Or in this case, with an officer's temporary permit, and they've overstayed, have you looked at saying there shall be no appeal with regard to that particular permit?

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**Ms. Joan Atkinson:** The short answer is no. Loss of appeal rights is a pretty serious thing, and we determined that the threshold should be relatively high if appeal rights are going to be lost. I should mention that when we talk about appeal here, we are talking about sponsorship, the right of a sponsor to appeal against a refusal of a family class application, an appeal against removal orders made against foreign nationals.

Now, when an individual is ordered removed, if they have entered Canada on a minister's permit, they don't in fact have an appeal right against that removal order, because it is only permanent residents and, under the current act, individuals who entered Canada with visitor visas who have appeal rights. So a minister's permit holder does not have appeal rights as such. If they are permanent residents, they have appeal rights. If they are a sponsor of a family class applicant, they have appeal rights. If they entered Canada with a visitor visa, they have appeal rights.

**Mr. Steve Mahoney:** A visitor's visa issued by the minister?

**Ms. Joan Atkinson:** No, a visitor's visa issued by a visa officer.

**Mr. Steve Mahoney:** But they're here, they've been turned down by a visa officer for a visitor's permit, and they apply and successfully obtain a minister's permit for 90 days. That 90 days expires. Are you saying they have no right of appeal?

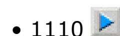
**Ms. Joan Atkinson:** To the Immigration and Refugee Board they don't. However, they may have access to the Federal Court of Canada for judicial review. With any decision taken under this act and under the current act, as we saw in clause 72, an individual has the right to seek leave to the Federal Court for a judicial review of that decision.

**A voice:** And they have a right to make a refugee claim.

**Ms. Joan Atkinson:** And they have the right to make a refugee claim.

**Mr. Steve Mahoney:** Oh, they can file a refugee claim anytime.

**Ms. Joan Atkinson:** Daniel, did you have something?

- 1110 

**Mr. Daniel Therrien:** I would just add, of course, that people have a right to judicial review regardless, including people who have a temporary resident permit, but it's very rarely exercised. In fact, I can't think of temporary residents who have sought judicial review.

So the bottom line is if you look at clause 63 of the bill, there is no right of appeal for temporary residents in the Immigration Appeal Division. There is the possibility of judicial review, but it's rarely, if ever, exercised.

**The Chair:** It's interesting, because the letter that the person holding a minister's permit receives invites the person to appeal the decision to leave the country.

**Ms. Joan Atkinson:** I can't comment on that. We'll follow up though on that particular issue, because they clearly don't have the right of appeal to the Immigration Appeal Division, but they do have the right to seek leave for judicial review.

**Mr. Steve Mahoney:** If you would follow up on what that letter says... I know what the letter says; I've seen it. The letter says get out of the country, but if you don't like the decision, call us and we'll review it.

**Ms. Joan Atkinson:** We'll follow up in terms of what that letter says and what it means.

**The Chair:** I'm going to take it for granted that all of us have studied Bill C-31 in its entirety and therefore we're looking at some changes to Bill C-11.

Can you just point out the changes in part 2 that were in Bill C-31 that now have been changed in Bill C-11 or in fact what has been added?

**Ms. Joan Atkinson:** Okay.

**The Chair:** Then we'll come back, I suppose, and after witnesses we'll get some more details on part 2. But maybe you can just highlight for the members who are here those clauses that are new in Bill C-11.

**Ms. Joan Atkinson:** I'd be glad to do that, Mr. Chair.

I would point out, first of all, page 41, subclause 100(1), on examination of eligibility to refer a claim:

> An officer shall, within three working days after receipt of a claim... refer the claim in accordance with the rules of the Board.

This is new in Bill C-11. The insertion of the timeframe embedded in the legislation is new. In Bill C-31 the timeframe was going to be in regulation. We've put it right into the bill.

Also new in Bill C-11, on page 43, paragraph 101(2)(b), convictions outside Canada:

> ...in the case of inadmissibility by reason of a conviction outside Canada, the Minister is of the opinion the foreign national is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence... that is punishable by... at least 10 years.

This is new from Bill C-31. Previously in Bill C-31, a person who had been convicted of an offence outside of Canada that was equivalent to 10 years or more was ineligible. We've added a “danger opinion” process so that we can look at situations where an individual may have had trumped-up charges, where there may have been political interference in the conviction, and make a determination. People can go into the refugee determination system unless the minister is of the opinion they are a danger to the public.

What else is new in terms of Bill C-11? I would take you to page 49, division 3, paragraph 112(2)(c), dealing with eligibility for the pre-removal risk assessment:

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> ...in the case of a foreign national who has not left Canada since the removal order came into force, the prescribed period has not expired.

This refers to individuals who arrived, did not claim refugee status, did not claim the need for protection, were determined to be inadmissible to Canada, and were ordered removed. If that removal takes place within three months, they do not have access to the pre-removal risk assessment. If we still have not removed them after three months, then they will have access to the pre-removal risk assessment.

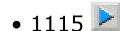
**The Chair:** What are the priorities that... Is that removal within CIC?

**Ms. Joan Atkinson:** That's a high priority? Yes, and we do try—

**The Chair:** Therefore, your hope is to get to them as quickly as possible.

**Ms. Joan Atkinson:** Exactly, and we do try to remove those individuals who are clearly inadmissible, particularly on serious grounds. We do try to remove them quickly.

**The Chair:** Okay.

• 1115 

**Ms. Joan Atkinson:** Paragraph 112(2)(d):

> ...in the case of a foreign national who has left Canada since the removal came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected...

This refers to individuals who have access to the pre-removal risk assessment.

In Bill C-31 we said they could only access it a year after they'd left Canada. In Bill C-11 this has been changed to six months in recognition of the fact that circumstances may have changed more quickly than that, so it gives them access to the pre-removal risk assessment after six months, as opposed to a year.

Also new, on page 50, is subclause 113(b):

> no hearing shall be held, unless the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

In Bill C-31 the pre-removal risk assessment was always done on the basis of a paper hearing. What we have added in Bill C-11 is the possibility of an oral hearing in exceptional cases. Those factors, the factors upon which an oral hearing may be held on the pre-removal risk assessment, will be outlined in regulations.

We should remember that the pre-removal risk assessment is basically meant to be an update of their protection claim, which was heard through the full process of the refugee determination system and was denied.

I don't think there's anything else that's new in here. What else is new?

**The Chair:** Could I ask you a technical question?

**Ms. Joan Atkinson:** Sure.

**The Chair:** We're talking about refugees who are inadmissible by virtue of criminality, let's say, but who have managed to get in here and want to claim refugee status. In light of the recent Supreme Court decision about not being able to return someone to a country where they still believe in and practise capital punishment, how much of that is going to be a factor in this, or is the Supreme Court decision narrowly defined in a way that doesn't impact on this at all?

**Ms. Joan Atkinson:** I'll speak to some of the policy and then I'll let Daniel speak to the Supreme Court decision.

As you know, in Bill C-31 and carried on here in Bill C-11, when we look at a claim for refugee protection, we look at three grounds. We look at the Geneva Convention, we look at the Convention against Torture, and we look at cruel and unusual punishment.

In the pre-removal risk assessment, if a person has been deemed ineligible to apply to go through the refugee determination system as a result of serious criminality, they will have access to a pre-removal risk assessment. We will not consider their protection needs under the Geneva Convention because they're excluded from the protection of the Geneva Convention because of their serious non-political crimes.

We will, however, consider their protection needs under the Convention against Torture and under principles against cruel and unusual punishment. We will consider their need for protection and the degree of risk that individual poses to Canadian society. Those factors will be looked at in the context of the pre-removal risk assessment.

Daniel, I don't know whether you want to comment on the Supreme Court decision.

**The Chair:** If you can do it in 30 seconds or less, sure. If not, we'll—

**Mr. Daniel Therrien:** Frankly, the result is unclear at the moment. The decision of the Supreme Court was in the context of extradition, but its principles seem to extend beyond extradition, to what extent we don't know exactly. There's another case that will be argued in the Supreme Court on the effect of the torture convention, and that may shed some light on this.

**The Chair:** You did it within 10 seconds.

**Ms. Joan Atkinson:** Those are the only new provisions in part 2 dealing with the refugee portions of the bill. Unless there are any other questions, I can do the same thing in part 3, on offences, though I'm not sure that we have anything that's new in Bill C-11.

**The Chair:** The smuggling, or those—

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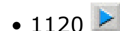
**Ms. Joan Atkinson:** Those are carried over from Bill C-31. Part 3 starts on page 52, and the offences dealing with smuggling and trafficking are found in subclause 117(2): "A person who contravenes subsection (1) by organizing the coming into Canada of fewer than 10 persons...". It goes from $500,000 and 10 years on conviction for a first offence to $1 million and 14 years for subsequent offences. If you are convicted of smuggling ten or more persons, then the penalty is $1 million and the possibility of life imprisonment.

• 1120 

The new offence of trafficking in persons is found on that same page in subclause 118(1):

> No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.

Aggravating factors are taken into account in clause 121, including whether "grievous bodily harm or death occurred during the commission of the offence"; whether "the offence was for the benefit of, or at the direction of" a criminal organization; whether "the commission of the offence was for profit"; and whether the "person was subjected to humiliating or degrading treatment", including sexual exploitation.

So those are all the new offences dealing with smuggling and trafficking carried over from Bill C-31.

**The Chair:** I'm looking at clause 148 and transportation companies. I think that imposes certain obligations.

When the committee looked at refugee determination, they considered the degree of cooperation that might exist between transportation companies in making sure that documents were proper and so forth.

**Ms. Joan Atkinson:** Right. These obligations are not new. They have been carried over from the current act. We have taken out a lot of the procedural detail that is found in the current Immigration Act and will put that in the regulations, but the principles are all clearly enunciated.

One thing that is new in the current act is paragraph 148(1)(d): "provide prescribed information, including documentation and reports". This allows us to build with the transportation companies an advanced passenger information system, one where we can be advised in advance of the arrival of a plane, train, or bus carrying individuals who may be of interest to us. That is, they may be inadmissible, they may be carrying suspect documents, and so on.

This allows us to streamline our procedures and deal more effectively with arriving passengers at ports of entry, including airports. That's a new obligation for transportation companies.

**Mr. Steve Mahoney:** In what sense does paragraph 148(1)(e) require them to provide detention centres?

**Ms. Joan Atkinson:** They are not necessarily required to provide detention centres but must provide some facilities to temporarily hold people and/or to pay for the temporary holding of individuals—but not to pay for and build detention centres, definitely not.

**The Chair:** I'm looking at part 4, Immigration and Refugee Board. Is there anything to highlight there?

**Ms. Joan Atkinson:** What I would highlight there in terms of differences from Bill C-31 is the involvement of... Is the involvement of UNHCR in this provision? No, it was earlier. I missed something earlier in part 2.

The provisions in here relate to, obviously, the creation of the four divisions within the board. There are some relatively technical amendments, some changes we made from Bill C-31, but there are no significant changes here that deal with policy issues, I believe.

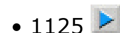
Daniel, is that fair to say?

**Mr. Daniel Therrien:** Yes.

**The Chair:** Can I just ask you then a general question as it may relate to refugees coming from a particular area without identifying that area now?

Suppose it became clear that there were a number of refugees who were coming from a particular country by virtue of either smuggling, promotion, or you name it, and who were promoting Canada as a good place to come to. Suppose this happened before these new provisions were put in place. Given that it could take up to two years to determine your refugee status and another two years for the government to actually remove you or deport you, someone could make a pretty good living for four years, depending on where they're coming from.

I don't mind telling you that the ambassador from Hungary came to see me. I think he has tried to cooperate with the immigration department and so on with regard to immigration matters—and I think it's even been identified for us in our particular hearings, be it the Chinese who came two summers ago or the Roma from Hungary. In fact, as recently as December, apparently, a number of people came in claiming refugee status from a particular country.

• 1125 

When we were talking about and with the IRB, one of the discussions we had dealt with the fact that there is some of this information available or some of this going on. I know we have to look at the individual cases for refugee status. The individual is important to our system, and I understand that. But when it became clear that one individual is now times 10,000, or it becomes 4,000 or 5,000 people who are all using the same way of getting in...

Is there a way in which Immigration Canada or the IRB, as another example, could essentially intervene at the earliest possible moment, either in terms of admissibility criteria or an admissibility gateway, so to speak, to stop that? If we have that kind of intelligence and information from our foreign partners, from other countries, telling us that this is what's going on, do you think you can prevent them from claiming refugee status? I know we might not be able to do that if we shorten it enough so that instead of taking two years to determine a refugee, we get it down to three to six months.

I know once we have determined they're not bona fide refugees under the conventions that we agreed to and we're able to remove them in quick

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order, we take away the incentive from some of these people from certain areas to try to take advantage of the situation. Is there something in there under the IRB and/or our protection system?

**Ms. Joan Atkinson:** There are a number of tools I would talk about.

First of all, there's the issue of ministerial intervention in the refugee protection division or in the refugee appeal division. The bill gives the minister the ability to be able to intervene much more readily and easily without having to seek permission to intervene. We have done this with some success in the past with some of these sorts of movements you're referring to. We have brought expert witnesses from the country of origin to the board, they have testified about the conditions for this particular group or community in that country, and that testimony has assisted board members in terms of reaching decisions. So ministerial interventions are made easier under this bill.

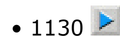
Secondly, with the refugee appeal division, one of the primary objectives of setting up an appeal division within the board is to allow us to have hopefully more consistency in decision-making. One of the difficulties we have now is that, even with all of the information that we may be able to provide or that the board itself obtains through its documentation centre, different members will look at cases differently and will arrive at different decisions. The refugee appeal division decisions will be precedential in nature, and we believe this will help to set a certain consistency in terms of the decisions taken by the refugee protection division.

Finally, the bill allows you only to get one kick at the can. You can only go through the refugee determination system once. This issue of the revolving door—people leave Canada, wait out the ninety days, come back, go right through to the beginning, and go through the process all over again—is eliminated in this bill. People will have the opportunity to make a pre-removal risk assessment when they've been outside of Canada for six months, but they will not have the opportunity to go through the whole system again. Hopefully, we will therefore eliminate the problem of those repeat claimants.

And Daniel has just told me that if we look at clause 171, it deals with the precedential decision-making of the refugee appeal division, which is again one of the critical pieces for ensuring consistency.

**The Chair:** Do other countries use a provision that way? Rather than using the precedent decision to expedite, is there a way of doing a collective refusal based on the information that one has, especially if we're dealing with one of our foreign... with other countries? If they are in fact truly partners and they want to solve the same problem for themselves, and if there is a bilateral international agreement between, say, ourselves and that country that would put in place these measures, is this possible under international law or convention?

**Ms. Joan Atkinson:** I'll let Gerry speak about that.

• 1130 

**Mr. Gerry Van Kessel:** We did a lot of policy work around the kinds of things we could do to deal with what internationally are called manifestly unfounded claims. For the provisions that are available for other countries—things like expedited hearings and so on—a higher threshold of evidence may be required. There's the ability to return people to so-called safe third countries under the doctrine of safe countries of origin. In other words, if you come from a certain country, by definition you cannot be a refugee. The European Union basically does that, or it's intending to do that with respect to its members by saying you cannot be a refugee in a member state.

In Canada, we took a look at whether or not we could have accelerated processes. What became clear was that because of the requirements of the charter, the standards for administrative fairness that we are required to follow are sufficiently demanding that, rather than go through what I would almost call a screen or an accelerated process, we might as well do the whole thing at once. There's not really much to be gained if you in fact try to develop some kind of screen. The screen takes as much time as going through the whole process.

Having said that, there is provision within the bill for the continuation of the concept of safe third. What that concept basically says is that a refugee claimant should not be at liberty to do what they call "asylum shopping", to shop for the most favourable place to make a refugee claim. If an individual comes through a country that in fact is a signatory to the convention, and it is a country that has appropriate and proper standards for considering cases, that individual should have a decision made there and can be returned.

You may be aware that we did negotiate with the United States some years ago, but that was abandoned. The authority, however, remains within Bill C-11 to in fact do that if a policy decision were to be made by the minister at some time in the future under C-11 to pursue that avenue.

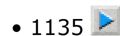
Group determinations are totally inconsistent with the individual nature of the claims that you have to look at. While it is easy to make generalizations, the problem with generalizations—and you obviously know this—is that there are always those individual cases that are the exception to the generalization. Our concern is that we find a way of distinguishing the exception from the general rule.

**The Chair:** I agree. Individual freedoms and individual rights and obligations are obviously something paramount in the system, but when it is known that it's a collective action as opposed to an individual action, then I just want to know where some of those barriers are. I think you pointed out that there may very well be safeguards within certain aspects of the bill to achieve certain things like that.

Thank you very much, all of you, for a very informative, very useful and constructive synopsis. I'm sure we'll have an awful lot more time in the future to go over some of these things. After we've heard from witnesses, we'll obviously again have questions for you. We'll make sure we feed you well the next time, and we'll let you know we'll probably need you for a little longer. Thank you all very much for your time and help.

Committee members, I wonder if I could just have you hang on for two minutes. I need you to pass a motion. As you know, the striking committee on travel has not been struck, if you can believe that. This means that for us to be able to start travelling in a week and a half in order to see those witnesses who want to meet us in certain parts of the country, we have to pass a motion that we will in fact bring to the attention of the Board of Internal Economy. That's the mechanism by which you do that if you don't have a striking committee for travel. And we also need a tentative schedule of where we will be going and when we will be going.

So if I could, I would distribute that to you. It's a motion so that we can commence this, because we have to take it to the House of Commons and Board of Internal Economy as quickly as possible.

• 1135 

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For the motion, I'll read it if I could, and we'll distribute it. It's moved that pursuant to its order of reference of February 27, 2001, relating to Bill C-11, an act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger, the committee be composed of ten members, two from the Canadian Alliance, one from the Bloc, one from the NDP, one from the PC, and only five Liberals; that they be authorized to hold public hearings during the month of April in six cities, namely, Vancouver, Winnipeg, Toronto, London, Windsor, Montreal; that the necessary staff accompany the committee and also the chairman's assistant; and that members of the committee use one of their points for this trip. That's the first one.

Can I have a motion to move on that one?

**Ms. Anita Neville (Winnipeg South Centre, Lib.):** I so move.

(Motion agreed to)

**The Chair:** Secondly, the budget and the itinerary approval... It says that the committee approve the proposed travel budget of $132,980 and the proposed travel plan and the schedule of hearings on Bill C-11, Immigration and Refugee Protection Act, and that the chairman be authorized to present it to the liaison committee. I should tell the members that this budget in fact is half of what we proposed last time. So, based on the witnesses who want to hear from us, we're travelling at less than half the cost. Can I have a motion for that?

**Ms. Anita Neville:** I so move.

**The Chair:** On the budget. Any objections?

[*Translation*]

**Ms. Madeleine Dalphond-Guiral:** Are you planning any trips during the Easter break? That's rather important for... You aren't?

[*English*]

**The Chair:** During our regular sitting time. And we hope to wrap this up by the first week of May—clause-by-clause and everything else—so we will be travelling when the House of Commons in fact is sitting.

(Motion agreed to)

**The Chair:** The third one is that we also said as a committee that we think informing and educating Canadians is very important. While CPAC will be televising all of our hearings while we are in Ottawa, I've made a special request that CPAC also televise them when we're in Montreal, Vancouver, Winnipeg. I think it's important, again, to have those witnesses and to have Canadians understand what those witnesses are saying. So I need a motion that says that the committee requests authorization from the House to televise its public hearings on Bill C-11 in Vancouver, Winnipeg, Toronto, and Montreal.

**Ms. Anita Neville:** I so move.

(Motion agreed to)

**The Chair:** And the last one I need is a motion to say the chair is authorized, in consultation with the researcher and the clerk of the committee, to group different organizations so that a number of witnesses could be heard at one time. I should tell you that 154 witnesses have been asked to appear, a lot of them in Vancouver, in Montreal, in Winnipeg, in Toronto, and in southwestern Ontario, and very few from Calgary. That's why we won't be going to Calgary and Regina. Even Halifax only had four or five people who wanted to talk to us, so we will do it by video-conferencing to make sure. But one of the things we want to do is be able to have four or five witnesses at the table at the same time, each making their own presentation but grouping them in such a way that we can be that much more efficient. So if you can give me the authorization to do it—to group them as best we can—I think it'll work.

**Mrs. Lynne Yelich (Blackstrap, CA):** I so move.

(Motion agreed to)

**The Chair:** And finally, the press release of the motion that says that the chair be authorized to issue a press release announcing that the committee will hold public hearings on Bill C-11. Dates will commence Thursday, March 15, which is the day after tomorrow, in Ottawa; Tuesday, March 20, in Ottawa; Thursday, March 22, in Ottawa; Tuesday, March 27, in Ottawa. So we have an awful lot of witnesses who want come to Ottawa. Monday, April 2, will be Vancouver. Tuesday, April 3, will be Winnipeg. Wednesday and Thursday, April 4 and 5, will be in Toronto—a lot of witnesses there. Monday, April 23, will be in Montreal. April 24 and 25 we will be back here hearing witnesses in Ottawa. I should tell you, while we are in Toronto, April 4 and 5, for a half a day we will be travelling to southwestern Ontario, Windsor, and London area, border cities that we'll deal with then.

Can I have a motion on that press release?

[*Translation*]

**Ms. Madeleine Dalphond-Guiral:** I'm fine with that.

[*English*]

**The Chair:** Madeleine, moved. Any objections to that?

(Motion agreed to)

**The Chair:** Thank you very much. And we'll get you those as quickly as possible.

The meeting is adjourned.

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