STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

COMITÉ PERMANENT DE LA CITOYENNETÉ ET DE L'IMMIGRATION

EVIDENCE

[*Recorded by Electronic Apparatus*]

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• 0903

[*English*]

The Chair (Mr. Joe Fontana (London North Centre, Lib.)): Good morning, colleagues, department. We're going to continue where we left off on Tuesday, for starters anyway, going through the explanation of the proposed regulations. I think we had taken it all the way to the part where we start on refugees.

I think we'll follow the same format, Joan, and have you go through clause by clause, and if we have questions or any need for clarification, we'll bring them up. If we get through that, then we'll probably get into those questions that arose from the bar association and a couple of others on which I know we want some clarifications or have some questions, if we could.

So let's move to the refugee protection classes, page 14 in your green binder, let's call it.

Ms. Joan Atkinson (Assistant Deputy Minister, Policy and Program Development, Citizenship and Immigration Canada): All right, Mr. Chairman.

With refugee protection classes, what we're talking about in these regulations are refugees resettled from overseas, not refugee claimants and persons who go through the refugee determination system in Canada. These are regulations that relate to the refugees we select overseas for resettlement.

• 0905

The first key issue we talk about is emphasizing the need for protection and relaxing the criteria for determining successful establishment. In the current regulations a decision of a visa officer is required to assess what the chances are for the refugee to become successfully established within a year of arrival in Canada.

We know that in fact refugees we select from overseas take longer than a year to get on their feet, to integrate themselves successfully into the labour market, to find jobs, and so on. So what we're essentially doing in the regulations is recognizing that reality and indicating that in assessing the potential for a successful establishment eventually, the visa officer should take a longer view of what successful establishment actually means, taking into account that refugees we resettle from abroad are assisted by the government for a minimum period of a year, and in some cases are assisted for longer in a joint assistance program, where we share some of that responsibility with private sponsorship. As well, of course, there are the refugees who obtain assistance from the private sponsors.

The second point here is ensuring immediate entry into Canada of persons in urgent need of protection. This is building on pilot projects we have put in place already, our urgent protection pilot, which, working with UNHCR and other organizations, identifies individuals overseas whose protection needs are over and above what we see normally in the refugee program overseas, and who require us to react very rapidly and move them to Canada very quickly, normally through a minister's permit or other such instruments.

The second piece relates to reunification of refugee families. This is done in recognition of the fact that we know refugees settle much more easily and adapt much more quickly if they have their immediate family with them. What we find often in refugee situations is that families are separated, that the head of the family has fled the country in which they are having difficulty to a neighbouring country or to another country of first asylum, and the family members are sometimes left behind.

What we are doing here is setting up a process whereby we would keep the applications open for the refugees and members of humanitarian classes who have come to Canada without their immediate family, their spouse, their partner, and their dependent children. We will keep those applications open for a year to allow their family members to come forward more quickly within that year period, rather than having the individual go through the family class sponsorship processing. So this is a way of trying to facilitate the reunification of those families that have

been separated due to the conflict in their home country.

The third important piece here is redefining or redesigning our humanitarian classes. Currently we resettle from overseas convention refugees, persons who meet the definition of a convention refugee in the Geneva Convention. We also resettle persons who are in refugee-like situations in our humanitarian designated classes.

The current humanitarian designated classes have a list of countries, source countries or countries of first asylum. They have requirements that there must be private sponsorship. What we are doing is removing the country list from our humanitarian designated class categories and replacing it with a more flexible tool. We know we need to be able to manage these programs and manage access into the categories to ensure that the program is linked to our capacity to resettle refugees from abroad and that we give priority to those who are most in need of protection. We are going to eliminate the country lists, because they are restricting where we can select people. We want a more flexible approach that allows us to resettle refugees from different parts of the world according to the need. We do need to have some kind of mechanism to manage that.

That's what we're currently working on.

The Chair: Before you go to waiting period and travel documents, I believe Inky had a question, and then Anita.

• 0910

Mr. Inky Mark (Dauphin—Swan River, CA): Thank you, Mr. Chairman.

I have a couple of questions, one on integration and support. As you know, that's one area that's been criticized immensely over the years. You mention that one year was the target for resettlement. Isn't that rather unrealistic? I'm sure you're familiar with the Danish initiative for a three-year integration program, the integration act they passed through their house or legislature.

Second, I wonder if you could react to the statement that the department should adopt overseas processes that include taking a proper record and accommodating the presence of counsel at interviews, as in Quebec selection interviews, with the intent of reducing circumstances giving rise to contested decisions. That's a very common criticism of this bill, the lack of a judiciary review.

Ms. Joan Atkinson: As to the question of integration, I think what we are doing here in the regulations is recognizing, as I said, that it's unrealistic for us to expect the refugees we select from overseas will be completely integrated, in a job and successfully established, within a year. These are individuals, obviously, we don't select on the basis of their ability to enter the labour market quickly.

Our overriding concern in refugee resettlement is selecting those who are in need of protection, where resettlement is the preferred option for them in their circumstances. We work very closely with the United Nations High Commissioner for Refugees in this program, identifying those pools of refugees where resettlement is the preferred option, as opposed to integration into the country of first asylum or sending them back to their home country if the situation has changed.

So what we're doing in these regulations is recognizing that it does take longer than a year for these refugees to be resettled and that, in selecting them, we should take the longer view of their settlement capacity.

As we mentioned before, we do have in our refugee resettlement program from overseas the government-assisted side of the program, which is by far the largest component of the refugees we resettle, where we provide the basic needs and assistance to refugees for a minimum period of a year. For certain refugees who have greater needs we enter into arrangements with sponsoring groups. We call it the joint assistance program, where we provide for a longer period of settlement adjustment and assistance, funded partly by the government and partly by the private sponsor. Finally, we have the private sponsorship program, where groups will assist in the settlement of those refugees.

We recognize that it does take a longer period of time. We are trying to adjust our regulations to reflect that. We continue to work with the groups involved in private sponsorship of refugees and the communities and NGOs involved in refugee resettlement, to look at ways we can refine our settlement assistance program for refugees to ensure we are providing the best services we can.

Mr. Inky Mark: What's your personal opinion on having more municipal involvement in the whole resettlement program, integration program?

Ms. Joan Atkinson: Obviously municipalities have a keen interest in the settlement of not just refugees but of immigrants more generally, since immigration is largely an urban phenomenon. We have recently been looking at ways, together with the provincial governments, of engaging the municipal level of government in a more comprehensive way in all our consultations on immigration and refugee policy and issues. That's something we will continue to work on. It's important that we ensure the provinces are also very much engaged in that process, and we are working with the provinces to see ways in which we can bring the cities to get more directly involved in the consultations on all our policies and programs.

The Chair: Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): This wasn't my original question, but I would like to pick up on your last comment. Will you be involving educational authorities as well, who really carry a huge load of the resettlement? Are you discussing this?

• 0915

Ms. Joan Atkinson: We have been. We haven't been ignoring school boards and other groups or institutions that are involved in the resettlement of immigrants and refugees. In fact, through our settlement programs we have engaged with school boards. For example, in some of our larger centres with larger school boards, we have funded, through our settlement programs, settlement workers in the schools to deal with some of the issues and challenges of immigrant children coming into those school systems.

So we are trying to identify ways that we can work with school boards and other institutions and organizations that are involved. We always have to keep in mind that our primary interlocutors in many respects are the provinces and territories, and we need to be mindful of the different levels of government and how they interact with each other. But our objective is to try to engage all of those groups and individuals who need to

be engaged in the dialogue, in terms of how we move forward with our policies and programs.

Ms. Anita Neville: To go back to my original question, you're eliminating the list of countries, and you say here on page 15 that you're introducing a mechanism to ensure that access to the program is linked to resettlement and given to those most in need of protection.

How are those decisions going to be made? Will you have criteria? Will there be policy input into that?

Ms. Joan Atkinson: The basic concept of our humanitarian designated class will continue to be resettlement for those who are in refugee-like situations, who may not meet the absolute definition of a conventional refugee in the Geneva Convention but for whom there are obvious protection needs. They are displaced, outside of their country of origin, or in some cases they are still within their country of origin but there are definite protection needs, and resettlement is the best option for these individuals. That will continue to be the basic policy intent of these classes.

I don't have a clear answer yet for you in terms of how we are going to build this access mechanism and manage the access into the program. We're still working on that. I can tell you, though, that we've been working very carefully with all of the NGO and stakeholder groups that are very concerned about this. We've had extensive consultations with the Canadian Council for Refugees and with the United Nations High Commissioner for Refugees. We're working very closely with those groups to try to define a mechanism that will allow us to ensure that we can resettle those who are most in need of protection but at the same time be able to manage access to the program.

We are limited to a certain extent by our capacity to resettle, because, as I said, we have a government-assisted program where we set aside a certain amount of money every year to provide the settlement services for those refugees we resettle from overseas. That's not, obviously, an unlimited pot of money.

So we do have to put some parameters around this to make sure that we're not overwhelmed, first of all, and that we can clearly resettle those who are most in need of protection. But we don't have it figured out precisely just yet.

The Chair: Final question on this one.

Ms. Anita Neville: I guess what I'm concerned about is how the decision is made. I appreciate the consultation process that you're going through. Will the guidelines and the criteria be articulated somewhere?

Ms. Joan Atkinson: It will in fact be in the regulations, so it will be very clearly articulated.

The Chair: Can I be a little more direct? We obviously have a system now that determines... whether or not it's under this section or examination. There is an existing system. It's not as if we're recreating the wheel here. Therefore, we're learning from our experiences in terms of overseas refugees.

I think perhaps what you're talking about—consultation, and putting in place the criteria that Anita has talked about—will help the situation. What we have heard so far from some of our witnesses is that our people over there on the other side don't have the experience and the training and the sensitivity that you might expect when you're dealing with people who, as you said, are obviously in trouble and are seeking to come to Canada.

• 0920 

The existing system we have obviously is based on a lot of experience. How would you change it in order to deal with some of the concerns that have been raised by some of our witnesses, who say our interdiction officers are not as sensitive as they possibly could be? What are the criteria?

Step one is that, if someone wants to come to Canada, either through the UN or through NGOs we look for those refugees that we think we can help, or they come to see us, or we seek them out. I think that's the way it works. So where is all this concern that perhaps we're not...

I know you spend a lot of time talking about protection, humanitarian, and compassionate, and yet that seems to be the opposite of what we hear from the Canadian Council for Refugees and people who say perhaps we're not being as open and sensitive, that perhaps some of the security checks and criminality checks that we do right at the first instance...

Maybe you can briefly cover that for us.

Ms. Joan Atkinson: Okay. You've touched on a number of things. Let me try to do it as briefly as I can.

First of all, on the refugee resettlement program overseas, normally the way the system works currently is that we work with UNHCR to identify the most urgent needs in terms of the pools of refugees around the world that the UNHCR has determined are in need of protection. That's a relatively small number of refugees that the UNHCR identifies every year for whom resettlement in a third country is the preferred option.

For the vast majority of refugees around the world, UNHCR's preference is that we, they, and the international community together deal with assisting countries of first asylum to integrate those refugees into local communities, or when the situation resolves itself in the home country, that they are repatriated voluntarily. There's a relatively small pool of those persons who are of concern to UNHCR where resettlement is the option.

So we identify where we need to be and where we need to have our resettlement program in consultation with the UNHCR. These are refugees who are in refugee camps in places like Africa. We travel into those camps. Normally there is a referral mechanism through the UNHCR where they refer refugees to us or to other humanitarian and refugee organizations working in the area that may refer the deserving cases to us.

You also talked about interception or interdiction. Yes, that's an area that causes some concern to some of our NGO and stakeholder groups. Interdiction is one of our very important tools to try to prevent smuggling and trafficking of individuals and to deal with the issue of irregular migration. We recognize the fact that refugees may try to get out of their countries using false documents, pay a smuggler, or do whatever is necessary to come to Canada, or other countries, to make a claim for protection and a claim for asylum.

Our interdiction efforts are really aimed at trying to stem the flow of irregular migration and deal with the smugglers and traffickers at source.

Our immigration control officers are sensitized to the fact that, when they intercept individuals or when airlines intercept individuals, if it appears

as though they are dealing with someone who may have a protection need, they should be referring those individuals to the appropriate authorities in that country—to the local UNHCR office, for example. Or, if they're in a signatory country to the Geneva Convention, then that country will have the responsibility and obligation to deal with those persons who are in need of protection through its own refugee determination system.

I must point out that the role of the immigration control officer is to provide advice to the airlines, which then decide whether they should board an individual. So that's an important distinction to make.

We are attempting to ensure that there are the appropriate checks and balances in our interdiction programs overseas to be able to ensure that persons who are in need of protection get the appropriate supports and are referred to the appropriate services in the countries in which they are intercepted before they arrive, in attempting to come to Canada.

• 0925

The Chair: Finally, for these refugees we seek out or the UN asks us to assist, what sort of criminality check is there? Do we take the word of the United Nations or do we do our own checks on those refugees who in fact are not undesirables?

Ms. Joan Atkinson: We do our own criminality and security checks on refugees. It's part of the processing of their application overseas for those we resettle from overseas. UNHCR does not necessarily have the capacity to be able to do the sort of security and criminality checks we must do to ensure that the refugees who we are resettling are not going to pose a security threat to Canada.

I would point out that in areas of the world such as Africa, it's said that it's not always an easy process for us to determine who it is we're dealing with and to be able to look at issues such as war criminals, crimes against humanity, and so on.

That's a very important part of the processing we need to do in that part of the world when we are assessing refugees who we seek to bring to Canada to resettlement. Across-the-board refugees who we resettle from overseas are subject to the same criminality and security checks as any other immigrant to Canada.

So we do them ourselves for all of those categories.

The Chair: Steve.

Mr. Steve Mahoney (Mississauga West, Lib.): Mr. Chairman, particularly since this is on the record, I would note that there may have been some people who have criticized the training and capabilities of our people overseas, but it's just not true. All you have to do is go to our offices overseas to see the reality of the skilled, dedicated people.

I personally have gone through our operations in London, Kiev, Moscow, and Nairobi, and spent time in three refugee camps in the desert where our people were trying to do processing and conduct interviews in the most unbelievable conditions that anyone could ever expect people to work under. And they troop on.

I say this so it's on the record, that there may be complaints from the comfort of an NGO's position in Canada, but they don't hold true when the rubber hits the road with the work our people do.

That's not to say we couldn't give them more support and continued upgraded training opportunities, but I would not want the record to say in any way that this committee or members of Parliament would buy into that particular outlook.

Ms. Joan Atkinson: I agree with you 100%.

The Chair: Thanks for that speech.

Next we have the waiting period for undocumented refugees and travel documents.

Ms. Joan Atkinson: With regard to the waiting period for undocumented refugees, as you know, currently in our regulations we have a category for undocumented refugees where successful refugee claimants in Canada come from an area of the world or a country where there is no central authority and where documentation for ID is simply not available. That particular category requires that the individual, if they're unable to provide us with appropriate identity documents to establish their identity, wait five years before they are able to become permanent residents and become landed.

We recognize that this is a difficult situation for those individuals. It means they cannot be reunited with their families for that period of time. However, we feel that we cannot land someone, we cannot give permanent residence to someone, if we don't know who they are. So we are retaining this category of undocumented refugees but we are reducing the period of time they must wait from five to three years.

Travel documents—

The Chair: Before you get to that, how many people do we still have in that category? Some of us who have been around here a long time know there is a significant number of people. In fact, one of the witnesses who came to this committee two to three weeks ago said that she'd been here nine years—

Ms. Yolande Thibeault (Saint-Lambert, Lib.): Twelve years.

The Chair: —or twelve years, and she couldn't get the documentation. Some of us were rather surprised. You're changing from five to three, and yet we know that there are still thousands who have been here for more than five years and we still haven't landed them.

So what is the policy here and what are we doing?

Ms. Joan Atkinson: I'm going to ask Jennifer Lutfallah to respond to that one, because she has more expertise in this area.

• 0930

Ms. Jennifer Lutfallah (Senior Advisor, Asylum Refugees Branch, Citizenship and Immigration Canada): We did a statistical run on the people who have been found to be convention refugees and who have not obtained landing. We did the run about five months ago and we found that there were just over a thousand people across Canada who have not been landed.

The Chair: And how long have they been here? Have we done that calculation?

Ms. Jennifer Lutfallah: We were not able to obtain that information.

The Chair: I can give the example of a person who's been here for twelve years. This person—and I don't want to give her name, it's in the record—came to us and talked to us from her heart and told us about the difficulties she was having. But to have to wait twelve years, there must be something wrong with either the case or the system. What is it?

Ms. Joan Atkinson: Twelve years sounds like an extraordinarily long period of time, and I would have to say that this type of case must be a real exception to the rule. We do run into difficulty sometimes with cases where it's not just a lack of identity documents, but there are other issues at play. There are other issues regarding criminality or security that cause us problems. On those issues we work very closely with our partner agency, CSIS, and there is a very small number of cases where some of those issues continue to be of concern and that make it very difficult for us to be able to make final decisions on granting permanent status to an individual.

The Chair: Inky.

Mr. Inky Mark: You've indicated here that you're reducing the waiting period from five to two years. My research tells me that this waiting period was shortened to three years in December 1999.

Ms. Joan Atkinson: Using the discretionary powers that are available to us under the current regulation, we had administratively taken steps to try to deal with a number of those cases. It was done administratively. What we are doing here is putting it into the regulations.

The Chair: What section of the bill is this? Is it anywhere in legislation, this timeframe?

Ms. Joan Atkinson: The timeframe is not in the legislation. It will be in the regulations.

The Chair: What section?

Ms. Joan Atkinson: It is section 12 of the act, and the regulation-making authority is section 14.

The Chair: Judy.

Ms. Judy Wasylycia-Leis (Winnipeg North Centre, NDP): I'd like some more clarification on this issue, because we've heard now from a number of groups who have actually said that, even with this change to regulations from five years to three years, we're in contravention of the Geneva Convention of 1951, and that it should be incumbent upon the Government of Canada to in fact find a way to allow undocumented refugees, who have a good explanation for their inability to acquire the documents, to be landed without penalty.

It seems to me that what you're saying is the status quo, it's reducing it from five years to three years, which is, as Inky pointed out, the case now. It doesn't seem to address the issues we've been hearing about for the last couple of weeks. Why aren't we making our law fully compliant with the U.N. convention?

Ms. Joan Atkinson: Let me give a little bit of context in terms of what we are doing to try to deal with this situation and then I'll ask Daniel to speak to the issues of the convention and our compatibility with the convention.

We recognize, obviously, that refugees arrive without documents in large measure. Part of their attempt to get out of the country in which they are having difficulty may involve fleeing without carrying with them all their documents. We recognize that this is part of the reality of refugee movements.

Part of what we're trying to do in moving the screening of refugee claimants right up at the front of the process rather than at the back of the process is to deal with those sorts of issues much earlier on. Currently, an individual arrives and claims refugee protection. They go into the refugee determination system and at the end of the refugee determination process when they are then ready for landing, it's at this point we conduct security checks and background checks and try to make a definitive determination, if you will, on their identity and whether they pose any security threat, or whatever, to Canada.

We're trying to move that process right up to the front end so that when they arrive in Canada, we start that process right away.

• 0935 

We think that will help us considerably in terms of dealing with some of these issues of undocumented refugees and the delays we currently see, with refugees left in limbo for a period of time after the Immigration and Refugee Board have determined they are indeed convention refugees. We're still unable to grant them permanent residence because we don't have all the information on their background.

By starting the process up front, hopefully, we will avoid the problem in a great number of cases because all of the checks will have been done right from the beginning. By the time they finish their refugee determination process, if they get a successful outcome, it will be much easier and we'll be more ready to land them.

I'll ask Daniel to address the issue of the convention.

Mr. Daniel Therrien (General Counsel, Legal Services, Citizenship and Immigration Canada): Very briefly, in looking at this question of whether we're in compliance with the refugee convention, it's important to look at the distinction between protection and the granting of permanent residence.

The convention does not require countries to grant permanent residence to refugees. With the considerations you were referring to when someone has no documents, we look at whether there are good reasons. It is addressed in the bill with respect to refugee protection.

In section 106, the IRB is required to look at this question. If somebody arrives without documents, are there good explanations for this such that there is still a need to protect the individual? Many people are indeed protected, and under the new legislation will continue to be protected even though they arrive without documentation.

That's where the obligations of the convention stop. The convention does not require countries, again, to grant permanent residence to refugees. There is more latitude in devising rules on who exactly should be receiving permanent residence.

Ms. Jean Augustine (Etobicoke—Lakeshore, Lib.): Can I follow up on one point?

The Chair: Sure.

Ms. Jean Augustine: In terms of Somalis, are there still a number of people from Somalia being asked for documentation? Are we cleared on that issue?

Ms. Joan Atkinson: Currently under the regulations, the Somali refugee claimants specifically fall within this undocumented convention refugee category because of the situation in their home country. There is not, and has not been, a central authority where we can get credible documents related to identification.

It's with that group, in particular, where we've taken the administrative step. We'll put it in the regulations to reduce the waiting period, from five years to three years, for that particular group of claimants.

We continue to work with the Somali community on these issues. We know these are tough issues for most of the community to deal with. We continue to work with, and try to resolve, these issues.

Ms. Judy Wasylycia-Leis: You're saying it's only in the case of those countries, recognized as not having central authorities to provide documents, that you're making the change from five years to three years. You're talking about Somalia and Afghanistan, and that's it. You're not making any changes to the regulations. There's nothing in this act to deal with the fact that, for many other countries, refugees come here and are in legal limbo because they can't get documents for good reason. We're making no provision in this process to deal with those refugees.

Ms. Joan Atkinson: Jennifer.

Mr. Jennifer Lutfallah: There is provision under the current legislation and under Bill C-11 whereby if someone does not have a document to obtain landing, they could seek humanitarian compassionate consideration for a landing. There will be provision carried over to the new legislation.

Ms. Judy Wasylycia-Leis: What provision under the law, or what section in Bill C-11, gives them this kind of protection?

I'm not an expert on this. We've heard representation for two weeks from reputable organizations saying they don't feel this act addresses that concern and nothing has been done to resolve the issue of folks being left in limbo.

It's a question of protection and it's not just a question of becoming permanent landed citizens. It's a question of access to things like education for their kids, and just being left to get on with their lives for many years.

• 0940

Mr. Daniel Therrien: Absolutely.

The current legislation, I think in section 46.04, provides the rule here. You can be landed under the current legislation and there will be no change under the bill. Despite the fact you don't have what is normally required, a passport or official travel documents, if you provide some kind of satisfactory identity document, a birth certificate, driver's licence, or whatever, that in the circumstances is found to be satisfactory under the current law, people are landed under this section 46.04.

Under the bill, we have moved the conditions for the selection of people as permanent residents to the regulations. That is a question you heard from some witnesses on whether it was an appropriate thing to do in the case of refugees. It's an open question.

Under the bill, it's clauses 12 and 14. Our objective and intent is to make regulations under clause 14 of the bill that would repeat the rule currently in section 46.04. If people have some kind of satisfactory identity document, they will receive permanent residence.

The absence of central authority only becomes relevant when there is no document available. When there are authorities capable of issuing some kind of document, not necessarily a passport, then it leads to the grant of permanent residence.

The Chair: Can I just ask a question?

Joan, you say we're moving the criminal security check from the back end to the front end. Some of our witnesses have indicated that if we do that, CSIS has done all of the proper checks and we are satisfied they are refugees, then why wouldn't we move them to landed status right away? It would thereby prevent people from staying in limbo for two to five years, not being able to work or do anything, and not being able to get any benefits for their kids.

Why wouldn't we do that if in fact we're taking security and putting it at the front end? I thought it was one way of making sure we can move fairly and effectively through the system.

There is another thing. Once the refugee determination system is done, we have the IRB and CSIS there to get the landed status. Then all of a sudden, they don't have anything to do with it any more. An immigration officer takes over and starts doing the same thing all over again by checking you out and finding out whether or not you're a good person.

If we are moving all of the stuff to the front end, which is where we want it to make sure Canadians are secure and people are bona fide claimants, why don't we move them into landed status, a suggestion some of our witnesses have made, to thereby reduce time and deal with it as quickly as possible?

Is that provision, option, or discretion available in regulations and/or legislation?

Ms. Joan Atkinson: I think our goal, most certainly, by moving security screening to the front end, is to be able to land accepted refugees as quickly as possible. If by the time they've gone through the refugee determination process they've been all cleared with our partner agencies in terms of their background, we've done all the medical screening and have satisfied ourselves in terms of identity and the identity of their accompanying family members, then we should be able to land them almost immediately.

The regulations that will govern the landing process are, in part 1, part of what we've already talked about. Every refugee claimant will be required to meet the same admissibility criteria as everyone else—the criminality, security, and so on. Once we've satisfied ourselves they have met those criteria and are who they say, by the time they get through the refugee determination process, landing should happen very quickly.

The Chair: You're saying your goal is to get that. If they're in part 2 because they're a refugee, they get cleared. Now they have to apply under part 1 of this legislation to get the landed status.

Ms. Joan Atkinson: That's right.

The Chair: That is where all the delays occur. Anyway, I put that out there.

Ms. Joan Atkinson: We're hoping to reduce all the delays by front-loading the work, essentially. When you arrive, we'll initiate all the checking we need to in order to grant you permanent residence status if you are determined to be a convention refugee. If we front-load the work, by the time you get through the refugee determination process, it should be very quick for us to be able to grant you permanent resident status at the back end.

• 0945

The Chair: Oh, numbers, Inky. Do we have any numbers on how many people...

Mr. Inky Mark: What are you looking at in terms of files or cases?

Ms. Joan Atkinson: In terms of the refugee determination system?

Mr. Inky Mark: Undocumented, in limbo.

Ms. Joan Atkinson: Oh, undocumented. Well, as Jennifer pointed out, the research we've done on our own databases shows fewer than a thousand cases of people who are in limbo, in terms of waiting to be landed as a result of not being able to establish their identity.

The Chair: Okay. Travel documents.

I think we're going to need a clarification, Daniel. I know you were talking about what the UN convention says about providing landed status and travel documents for refugees. We're going to need a clarification, because that explanation seems to be counter to what other people have said as to what our obligations are under the convention.

Mr. Daniel Therrien: As to what you've mentioned, we'll provide that explanation. But you've mentioned the obligation to provide documents, which is different from the obligation to grant permanent residence. There is an obligation to provide travel documents—

The Chair: Which is in the next clause, on travel documents.

Ms. Joan Atkinson: That is indeed in the next clause, when we talk about travel documents. In the bill itself, in subclause 31(1), it is enshrined that:

> A permanent resident shall be, and a protected person may be, provided with a document indicating their status.

Again, persons who have received protection in Canada and whose identity has been established—so we know who they are—will be eligible to apply for Canadian refugee travel documents. We will, in immigration, issue a document indicating their status as an accepted refugee, and with that document they will be able to go to the passport office and obtain a convention refugee travel document, which will allow them in fact to leave the country and re-enter the country. That is not the same as permanent resident status, as Daniel has pointed out.

The Chair: Okay. Next is division 2, examination.

Ms. Joan Atkinson: All right. Now we're leaving the refugee resettlement issue and moving to examination. Let me just say that there is a lot of confusion around examination. We can talk about some of those issues later, Mr. Chairman, if you want to, because I know there have been a lot of comments about the examination powers in the bill.

Let me just say that we have grouped together all of the various types of examinations that we currently do under the current act into one place. Currently, people are examined overseas when they apply for visas; they're examined at ports of entry when they arrive; they're examined when they are called in, or when we may be looking to remove someone because they are inadmissible. There are various types of examinations right now in the current act that we have put all in one place so that the same rules will apply to all types of examinations under this act.

We don't have a lot of detail here right now in terms of the regulations respecting the conduct of examinations, but they will be for things like medical assessment and the rules regarding obtaining the information that we require in order to make an assessment under the medical admissibility provisions, for example. The regulations will also cover the rules regarding applying for a visa overseas and so on and where examinations may be conducted—at ports of entry overseas or in Canada. All of that procedural detail on the conduct of examinations will be in regulations, and those regulations will be done under the authority of clause 17 of the bill.

But all the basic parameters around the obligations of the individual and the rights of the individual under an examination process are in the act itself.

The Chair: As you said, a lot of this is going to fall within regulations. Regulations without definitions, or a broader sort of definitions, leave an

awful lot to the discretion of a particular immigration person whom you're approaching, either for a visitor's visa or for changing the status that you have and everything else.

In terms of definitions, or rules, if you say that this is all going to be in the regs, but so far you just have a principle, are there going to be rights and obligations that are set out, either in the legislation... You say that clauses 15 and 16 deal with this, but in terms of the rights and obligations of anybody who is applying to come to Canada or something, is it going to be a little more specific than that?

• 0950

Because although there are rules, it seems to me that every time someone tells me they're applying to visit Canada from overseas, somebody overseas is refusing them. Then they want me to get involved and write a letter saying "I know the family and, yes, they're going to return. They just want to come and see the family."

I'm having to do an awful lot of immigration work myself, and I'm sure my colleagues will tell you the same thing, because it's left to discretion.

So what does this mean in terms of definitions, rules and regulations, and/or training? I get a little nervous that there's so much discretion out there that when you approach an official to ask whether or not you can come here, it all depends on whether that person is having a nice day or a bad day.

Ms. Joan Atkinson: First of all, the basic obligations for individuals applying to come to Canada are clearly articulated in clauses 15 and 16 of the bill. This includes the obligation to answer questions truthfully, and to produce all required documentation.

Individuals applying to come to Canada, with whatever status—whether as immigrants or as visitors—must meet those basic obligations. The basic requirement for visitors, as articulated in the legislation, is that they're coming for a temporary period. That's the basic requirement any visitor must meet.

Visitors must also satisfy the immigration officer that they are not inadmissible to Canada. The legislation clearly outlines the inadmissibility criteria—criminality, security, medical issues, and so on. They must meet all those requirements, and they must have a travel document. Those obligations are clearly articulated.

In terms of whether an individual is in fact coming to Canada for a temporary period, that decision, by its very nature, involves judgment on the part of the decision-makers. They are not just guided by detailed rules and regulations of what "temporary" means, because that varies tremendously according to the individual circumstances of the case.

Making decisions on visitor visas is one of the most difficult tasks for visa officers overseas. Generally they've got somebody who has come in and is sitting in front of them with their documentation—letters from the family in Canada, and documents related to their situation in the home country in terms of their job, their family status, their funds.

The visa officers have to weigh all the factors and determine whether they believe the person is going to Canada for a temporary purpose. Given the individual's situation in the home country, in terms of job situation, money available, the reason for going to Canada, does it make sense that this individual is going to go to Canada, and then come back again?

Our officers, our decision-makers, are always guided by the rules of procedural fairness and natural justice. They all receive training on those rules, and are always guided by those basic precepts and concepts, in terms of fairness.

They ensure that applicants are given an adequate opportunity to present their case. If visa officers have a problem with the documentation provided or the information given, they tell the applicants their concerns so the applicants have a chance to respond. The officers take all those issues into account, weigh all those factors, and make a decision—which they're often required to do in a very short time. They have to do it on the spot, right that day, with the person sitting in front of them. It's not an easy job.

So I don't think we can have detailed rules that cover every situation when our officers are dealing with visitor visas. Every case is different, and the different circumstances that officers have to deal with simply do not lend themselves to detailed rules that try to cover every single situation. So yes, there is an element of judgment involved.

The Chair: Okay.

Jerry.

Mr. Jerry Pickard (Chatham—Kent Essex, Lib.): One of the problems here—and I'm sure my colleagues all have the same difficulty—is that let's say someone applies to visit Canada because her sister is dying here, and she has to come immediately. Such people often get turned down. I don't think that's fair, quite frankly.

• 0955

As a member of Parliament, I almost feel I have to sign my life away in order to get them here and get guarantees and do all kinds of things so that, yes, everyone in Canada will do everything we can to make sure they go back. I try to get assurances from church groups, family, friends, or whoever is involved. But the problem I have—and maybe you could clarify some of this for me—is that I've never had, over the 12 years I've been here, anyone who hasn't gone back when they were supposed to, and I've had many, many requests where I've had to put myself on the line with almost the threat in the background of "If you don't fulfil it, don't ask again".

Now, that's fine and dandy for assurances, but let's say one person doesn't. Out of the number of cases I find turned down, I think your officers would probably say "I don't want it on my shoulders, so I'm going to drop it on somebody else's". So it becomes a political rather than an administrative decision, and I don't think that should be the case. I think we should probably be a little more flexible in many of these cases, particularly looking at the track record.

Now, maybe the question I'm asking is this: How many of these folks who come in don't return? Is it a major problem, or is it just protection of those who are making decisions, to say "My track record has to be clear"?

The Chair: Joan, maybe I can just get a couple of questions in from Judy and Inky.

Ms. Joan Atkinson: Sure.

Ms. Judy Wasylycia-Leis: I think it would be useful to have some data showing the numbers of visitors' visas issued, by country of origin, and the default statistics over a period of time.

I agree; our experience is that most people are true to their word, and yet the general approach to this seems to be subjective decision-making, a whimsical decision-making process that leaves many people wondering. In the case of a wedding, a funeral, or someone who's sick and dying, they can't get the system to respond. Sometimes it's something way back in their background, or another family member. All kinds of factors enter, and it seems so unfair.

I know we've raised in the past the issue of some sort of bond or some financial penalty. I know that was rejected, partly for the good reason that it might become the norm, and then we would be excluding people on basis of economic position. However, it seems to me that would still be better than the way things are right now, just because it's so hard for us, and so unfair.

The Chair: Inky.

Mr. Inky Mark: On the same line of questioning, I would say the system forces the immigration officials to do what they do. It seems we lack entry and exit data, so they don't really want to jeopardize their own decision-making. The problem is, even when they give out visas, they don't know if these people are going to leave Canada when the visa comes to a termination. Maybe it's time Canada started keeping track of who comes into this country and who leaves.

The Chair: Mr. Mahoney.

Mr. Steve Mahoney: I want to add something on this point. Jerry says, "Is it a problem?", and I say facetiously, "It's only a problem when it happens".

I have a case right now where, through my efforts, a young girl got a minister's permit and signed guarantees, etc., to come here to care for a double amputee in my riding, a senior citizen who's a wonderful person. Everything was great. There was all kinds of support from everybody.

But now the minister's permit has expired, and this girl has left the double amputee on her own and refuses to go back. So because of that, my guarantee is there, which means I'm out of business for one year in terms of those permits.

Now, I knew the risk I was taking when I signed the guarantee. I haven't asked for very many minister's permits in my time here, and this is the first one that's gone sour on me. But my complaint is, there's no way to get this girl out of the country. That's what so frustrating.

With all due respect, Immigration Canada keeps telling me she doesn't have any appeals left. Then she gets a letter saying, "You're supposed to leave, but if you don't agree, call us and we'll listen to you". She does that, and the next thing you know, she hires a lawyer.

• 1000

So now she's got a lawyer defending her, she's living with her brother, and she is milking this system. I'm informed by the minister's staff that it could take one to three years to get her out of the country. The reason is that we have no mechanism we're prepared to use to physically go, arrest the individual, escort them to the airport, and say they have to leave. We can't, because it's not on the priority list. We deal with criminals first, getting them, you know, etc.

The Chair: That's a good question. We're at the examination and I'll get Joan to answer it. So far I've had three questions, so maybe I—

Mr. Steve Mahoney: Please don't tell me there's no appeal.

The Chair: No, there's—

Mr. Steve Mahoney: I have that in writing, that there's no appeal, and this girl's appealing everywhere.

Mr. Jerry Pickard: The question I was asking, Steve, was not whether it is a problem. The frequency was what I was looking at. You mentioned a situation where you have a problem. I have to say that I have not had a problem, fortunately, in 12 years, and I would guess most members of Parliament, by the time they do the checking with their constituents, are very thorough, realizing some of the consequences.

The Chair: I'd just tell them that their name is going to be all over the newspapers.

Mr. Jerry Pickard: We should have a mechanism to resolve questions that we may not now be able to resolve. At the same time, how often does that happen? I think that's critical.

The Chair: Joan.

Ms. Joan Atkinson: I don't have any statistics with me today as to how many visitor visa applicants "jump", as we often call it, and make refugee claims or go underground and stay in Canada. We do have data, however, about holders of visitor visas who then claim refugee status. That information is fed back to the visa offices, so that when we determine that a refugee claim is made by someone who entered Canada originally on a visitor visa, that information goes back to the visa officer to assist them in their decision-making. It acts as quality assurance, if you will, or a quality control check as to whether or not they should have looked at some other things in making their decisions.

What I can tell you is that the numbers are small. It's not surprising that the number of visitor visa holders who claim refugee status is small, because of the nature of the visitor visa screen. We put the visitor visa screen in place as a basic control mechanism to deal with irregular immigration, and we do, as you all have been noting, try to do a very careful screen of individuals who come forward to us asking for visitor visas, to try to make that determination on whether or not they're likely to come back.

Elizabeth, do you want to add something here?

Ms. Elizabeth Tromp (Director General, Enforcement Branch, Citizenship and Immigration Canada): It's on the issue of frequency and

how much of a problem this is. Again, we can go back and look at what stats we have and provide those to the committee, but it is difficult sometimes to get a true handle on it.

I'll give you an example of one trend we're seeing, and this is a trend, I think, internationally right now, which is an increase in in-land refugee claims. For example, people are showing up at in-land offices, say in downtown Toronto, claiming refugee status, often undocumented. The question is how they are getting into the country. Again, we don't know, it's hard to know, but one way could be that they're coming in legitimately through our ports of entry, which means they could have been issued visitor visas. Smuggling through and good fraudulent documentation are other ways they might be getting in.

Again, these are things we're looking at and tracking, but certainly anecdotally and based on what we're seeing in other countries, that is an area countries more and more are feeling they need to focus on, the visitor visa issuance.

The Chair: As I understand it, Joan, the preamble here is that you're moving, under the existing legislation, to essentially a new concept of examination, and you're going to class everything together. You're moving some of the things from legislation to regulation. So an awful lot of the questions you've heard so far relate to the discretionary powers of regulations or of an individual who has to interpret those things in the absence of the rules and regulations you're thinking about, but we don't have.

• 1005

I want to leave that, because I know you probably want to talk about the bigger issue that's come up that this committee has heard in terms of the powers of the immigration officers, the discretionary powers, the checks and balances that may or may not exist in moving from perceived or legislative rights to certain regulations. I'll leave that for a little later, but you can tell by the discussion here why there's some frustration.

Ms. Joan Atkinson: Just before we leave that, I'll state that we are not taking anything out of legislation and putting it into regulations when it comes to the powers of examination. I want to make that really clear for everyone. What we're talking about here with regard to the regulations are procedural details in terms of where an examination may be conducted and the specific details around how an examination may be conducted. We are not moving anything out of legislation concerning the powers of officers to examine people in terms of the obligations of individuals who are being examined.

So all we're doing is simply amalgamating it all in one. We're not taking anything out of legislation.

The Chair: Then just give me the section number of where those obligations are, for both the applicant and the immigration officer, in the existing legislation and/or the regulations that currently exist with regard to those things and we'll do our own comparisons. I know you've given us comparisons of Bill C-11 and Bill C-31, but this would be from the old act to Bill C-11.

Ms. Joan Atkinson: I can tell you, for example, that for overseas examinations, when you're making an application for a visa, in the current act it's sections 9 and 10 as compared with clauses 15 and 16 here. You'll find in fact that it's very similar in terms of the obligation on the person to answer truthfully and produce all required documentation. That's straight from what we have in the current act in terms of the obligations of persons and what we have in the bill.

Other parts of the current legislation relate to examinations at ports of entry. Again, where the obligation is on the individual to answer truthfully and produce all required documentation, I believe that's section 12 of the current act. Similarly, when we're dealing with examinations within Canada, people reporting to senior immigration officers for determination of a potential removal order—I don't have in my head which sections of the act—the same types of powers and obligations are found.

So they're scattered throughout the current act, and we've put them all in one place in Bill C-11.

Mr. Daniel Therrien: To put it very succinctly, within the bill we are not changing at all the rules on *who* is entitled to come into Canada. The substantive rules on who's entitled to come in as a visitor or a refugee, or under whatever status, continue to be in the bill. It's the *how* that is dealt with in the regulations.

The Chair: I know, but we're telling you that the problem right now is with the how. It may very well be that the how is wrong right now, and it may continue to be wrong in the future.

At any rate, this is exploratory. We're not at the stage where we have to probe any further, and I understand that.

Lynne.

Mrs. Lynne Yelich (Blackstrap, CA): I have just a quick question. Actually, I would like to see your checklist of how, because I've had problems with that too. I mean, people who have owned homes were not allowed to come to visit their children here. Isn't there a little checklist? If they own a home, wouldn't there be a checklist, and there be automatically some type of a deterrent?

The big question is on the role that we MPs should play. What should we do now? I'm sure 301 of them are doing the same thing that Steve's done and that Mr. Pickard mentioned. It puts us in one hell of a position, and I don't know what we should do.

The Chair: I'll let Judy ask her question.

Ms. Judy Wasylycia-Leis: I'll follow up on that and ask one more question.

I just resent the fact that we are left trying to deal with the shortcomings of a system by being referred to minister's permits. I've avoided minister's permits all along. At some point, maybe I'm going to have to deal with them.

I think what's happening is that a minister's permit is being used as a mechanism to deal with the shortcomings of the system as opposed to a mechanism to deal with extraordinary, unforeseen circumstances. When you see that kind of use of minister's permits, I think something is wrong with the act or the regulations or the system.

• 1010

My question was more along the lines of the chair's, about whether they're old or new provisions. We have heard testimony before this committee about clauses 15 and 16—for example, from the Canadian Bar Association—saying that we're dealing with sweeping, unrestricted, draconian powers of arrest and compelled examination that are offensive to the most basic civil rights of foreign nationals, including established permanent residents in Canada.

I think we need to hear—

The Chair: We're going to deal with that particular stuff after we get through with this—

Ms. Judy Wasylycia-Leis: Okay, but I just think we need to hear—

The Chair: We need to get—

Ms. Judy Wasylycia-Leis: —an explanation. Are they wrong? How do we—

The Chair: We'll get into those kinds of detailed questions after we finish this overview of the refugee stuff. We were dealing with examination. Maybe, Joan, we can just continue with entering and remaining in Canada, the bonds—in fact, some of the questions may be answered if you do it.

Ms. Joan Atkinson: Yes.

Mr. Steve Mahoney: I'm sorry, Mr. Chairman, I hate to delay it, but I didn't hear an answer to Jerry's question about what can be done to resolve the problem of someone violating a minister's permit. If they claim refugee status, then they would go into that stream, and it seems to me the member should be off the hook, if you will—

Ms. Jean Augustine: Thank you.

Mr. Steve Mahoney: —once they're in that stream. That's happened in a case here.

Ms. Jean Augustine: That's where I am right now.

Mr. Steve Mahoney: If they don't claim refugee status but are issued orders to leave the country and simply refuse to leave the country, then surely to goodness... If we have a system that allows us as members to put our names on the line to get a minister's permit...

I know that everybody—all parties—are diligent about doing it; you don't do it easily and flippantly. In fact, I've done it four times in four years, and I've only had one blow-up. If you can go to the extent of politically getting a minister's permit to bring this person in, we have to have with that the ability to escort him to the airport.

The Chair: I know this is covered in the coming pages—deportation, removals, it's all there. Can we cover it there, because that's where the question is germane, or at least the answer might be?

Ms. Joan Atkinson: All right.

The Chair: "Division 3, Entering and Remaining in Canada".

Ms. Joan Atkinson: Okay. Again, clause 26 of the bill authorizes the making of regulations to provide for any matter relating to the entry to and remaining in Canada. The existing provisions relating to entering and remaining in Canada will be retained, but again we are moving procedural detail to the regulations.

We've listed some here—for example, the temporary entry of persons who are inadmissible or don't meet the requirements but whose entry is justified in the circumstances.

Currently, under subsection 19(3) of the act, individuals who don't meet the requirements but where the examining officer determines that their entry is justified can be allowed into the country for, I think, 30 days. That's a procedure that will be found in the regulations in the new bill.

Reports on inadmissibility, including the way in which those reports are referred to the Immigration and Refugee Board for an admissibility hearing—those are procedural details; they will be found in the regulations. Currently report writing is split in the act between port of entry and inland, but again the procedural detail on how those reports are written is not found in the current act either, and they will be in regulation in the new act.

Circumstances in which persons seeking entry may withdraw their application to enter Canada and leave voluntarily—again, that's a provision that we currently have. If an examining officer at a port of entry determines that you are not admissible, you always have the option of withdrawing your request to enter. That provision exists now and will continue to exist.

Directing persons to return to the United States pending an admissibility hearing—we have that provision now where, for example, we're not able to conduct the admissibility hearing because we can't schedule it because we don't have translators or interpreters. This again allows us, rather than putting people in detention, for example, to direct them to return to the United States while we schedule the admissibility hearing. That's a provision that we have now.

And finally, conditions that may be imposed on persons entering or remaining in Canada. That's for both temporary and for permanent entry. For example, on temporary entry the condition may be that you attend this institution for this period of time or that you work for this employer for this period of time. For an immigrant, it may be that you're subject to medical surveillance. For example, if you have non-infectious tuberculosis, we need to monitor you. If you're an entrepreneur, the requirement under the current act and regulations is that you establish a business that will employ at least two people. Those are the sorts of things we're talking about regulating. They're in the regulations currently, and they'll be in the regulations for the new act as well.

• 1015

Mr. John Herron (Fundy—Royal, PC): I have a question relating to the circumstances in which a person seeking entry may withdraw their

application to enter Canada. Presumably, they are doing that voluntarily because something came up or they knew quite well that they would not be allowed into the country. To me that would be a flag saying, why are you all of a sudden so scared about putting your application through? From an organized crime perspective, is there an automatic procedure now where you would check to see if the RCMP are shopping for this person or this person is on the Interpol list? Do we automatically look? If someone rescinds their application, how do we engage right away?

Ms. Joan Atkinson: I'm going to turn to Elizabeth here. If they withdraw their application, is their name entered into our database? If they've withdrawn it and there's no application, do we simply leave it at that?

Ms. Elizabeth Tromp: With regard to applications overseas, quite honestly, I'm not quite sure how we capture that information and pass it on.

Ms. Joan Atkinson: It's in terms of the port of entry.

Ms. Elizabeth Tromp: At a port of entry we may not allow a person to withdraw in each and every case. If it's a serious crime or part of organized crime or there's something of a serious nature, we can keep the person, write up a report, and send that person to an inquiry. We can take that type of action.

Mr. John Herron: What if you didn't know? You might want to check and see if there is something there. You're trying to keep an eye out for people who might be involved in a crime of that nature.

Ms. Elizabeth Tromp: We would be engaging with CSIS and the RCMP in circumstances where there were reasons to suspect that there was something of that nature going on.

Mr. John Herron: Would this be automatic in Buffalo?

Ms. Joan Atkinson: I think we're talking about checks at ports of entry when people arrive. As you know, on the front line we have customs officers, and they have access to our database. You may note that when you come into the country, they will scan your passport if you have a machine-readable passport, and checks are made against the Immigration database. In the Immigration database we do have information on individuals that comes to us via the RCMP or CSIS. Those checks can be done at the port of entry.

But we have to remember that there may be no particular grounds to suspect that an individual is inadmissible. When there is a passport, there is normally an automatic scanning of that passport, particularly at airports. But where individuals arrive without passports, we don't necessarily check every single person against the databases.

Mark, do you want to add something?

Mr. Mark Davidson (Deputy Director, Economic Policy and Programs, Citizenship and Immigration Canada): Yes. I just wanted to clarify that this provision to allow individuals to withdraw is really intended for much more minor situations. There may be a minor problem with their application to enter Canada at the port of entry.

Mr. John Herron: I just think it's a tool in your tool kit. If someone changes their mind about something as profound as going to a new country, I'd like to know why they rescinded. This is something that people don't just do off the cuff.

Mr. Mark Davidson: It's normally where we have information and we say to them, for instance, you may not have been aware but your minor criminal conviction in the United States may make you inadmissible to Canada. It was an unintentional attempt on their part. We present them with that information, and we say there are two options: you can withdraw your application to enter Canada, or we can proceed to an admissibility hearing or a decision at the port of entry.

• 1020

So it's really a situation where we present to them, rather than them saying all of a sudden, I don't want to proceed with my application at the port of entry.

The Chair: Inky. This will be the final question on this part.

Mr. Inky Mark: Have you looked at the committee's recommendations in the document *Refugee Protection and Border Security*? As the chairman indicated with the refugees, if we were to do the screening at the front end, we'd save ourselves a lot of problems. I think this is where the problems really rest. Do the proper screening and the instant checks at the front door. I think we would save probably 90% of the problems that we read about in the media all the time.

Ms. Joan Atkinson: We do checks at the front end now in terms of people coming into the country, as we've discussed. I think we have to put it into context, though. There are some 200 million crossings of the Canada-U.S. border every year. That's a lot of people who travel in and out of the country, and 99.9% of the people who come across that border are totally compliant with our rules and regulations. So we don't want to get in the way of business travel and legitimate travel. When we set up screening at the ports of entry and airports, we have to make sure we are not holding up the vast majority of perfectly legitimate travellers who are coming across.

Obviously, we have to be vigilant. We have to be targeting those travellers who are going to cause us problems, who are going to be security concerns, criminality concerns, or whatever. We do have checks and balances in the system. There's always room for improvement, and we continue to work on that in terms of improving it.

Mr. Inky Mark: The committee report recommended the use of technology. We live in the age of computers. Surely, instant checks through technology can be the answer.

Ms. Joan Atkinson: We are indeed exploring technology. We have had programs in the past, and we are continuing to explore the use of technology to try to facilitate the legitimate traveller. We've set up some projects at our border crossings with the United States, for example. That involves a pre-enrolment, where you get a card that you swipe, and that allows you to go in without any further inspection.

But we have to recognize that technology is not the only answer. We have to have well-trained people on the front line who are able to target and identify those particular people who are of most concern to us. We have to have good intelligence, which we collect not only from our own law enforcement agencies within Canada but that we share with our partner agencies, such as the Americans, where we can identify the

problems hopefully before they arrive at our border and take preventive action.

Those are all of the strategies we're working on.

The Chair: The bottom line on this one is when you say move procedural details to regulations, where were they before? Were they in regulations or legislation? Where are they coming from?

Ms. Joan Atkinson: Most of the procedural detail is currently in the regulations, but not all. For example, the temporary entry of persons who are inadmissible, the first bullet there, who don't meet the requirements but whose entry is justified in the circumstances, that's currently in the act. We are moving that to the regulation. The one directing persons back to the United States is currently in the act. We are moving that to regulation. The voluntary withdrawal one is currently in the act, and we're moving that to regulation.

The Chair: What's the justification for moving these from legislation to regulation? As I read through them, they're pretty significant things. Why? Is it for ease of administration?

Ms. Joan Atkinson: It's partly for ease of administration and partly because we believe that what we have clearly articulated in the act is all of the rights and obligations and the grounds for making decisions on admissibility into Canada. These issues are administrative detail in terms of how we are actually implementing those grounds of inadmissibility and the rights and obligations.

The Chair: All right. Let's go quickly through bonds and permits.

Ms. Joan Atkinson: What we will do in the regulations here is maintain the existing provision that we can require a deposit or a guarantee in relation to conditions of entry.

• 1025

Where we believe we are dealing with a bona fide visitor, for example, but there are terms and conditions we have imposed on that visitor, in respect of the nature of their employment, the nature of the school they must attend, and so on, and we want to request of them a bond or a guarantee as a way of trying to ensure that they meet those requirements, currently this is done only at a port of entry. We don't currently have a provision for the taking of a deposit or a guarantee overseas in a visa office. We've talked with this committee, and previously, about the issue of bonds or guarantees being taken overseas by these offices. We are leaving ourselves the possibility in the regulations of doing that. We have no plan developed at the moment for taking bonds in the overseas context, but the regulations will give us the possibility of doing so in the future.

The Chair: On the next section, permits, this is where some of the...

Excuse me. Please go through the chair, so I know you want to talk. Jean, do you have a question?

Ms. Jean Augustine: When you said the future, what future are we talking about?

Mr. Steve Mahoney: Yours or ours?

Ms. Joan Atkinson: I certainly can appreciate from all the comments and discussion we had before that this is an issue of real concern to the members of this committee. We would be happy to have a more in-depth discussion on it. We've already pointed out some of the difficulties and disadvantages of trying to put in place a bond scheme overseas for visitor visas. You get into issues such as the claim that only the wealthiest can come to Canada, because it's only people who have money. What is the appropriate level of the bond for it to really act as a deterrent? You need to compare what people pay smugglers and traffickers to get themselves to Canada with what you would require people to put up as a bond in order for it to act as a real deterrent. So there are a lot of really complicated issues you need to look at when you start considering issues of bonds and guarantees for visitors.

The Chair: Quickly, Jerry, on bonds, then Judy.

Mr. Jerry Pickard: As a quick response, if it were an option, rather than a requirement, and somebody were willing to put up a bond, whether it's on this side or in another country, for this person to come for a period of time, I think that would be okay. But if you use it as a guideline, you've got problems. If you use it as another option in the tool bag, I think it will work.

Ms. Judy Wasylycia-Leis: That issue has been raised before, that it might become the norm as opposed—

Mr. Jerry Pickard: But it can't.

Ms. Judy Wasylycia-Leis: My argument on that would be like yours: surely there are ways for our system to guard against that happening.

One final question would be to ask for some comparative information. What are other countries doing? I think either Australia or New Zealand is trying a bond system, or a financial—

The Chair: It's no good all trying to debate the bill at this point. Surely we're going to have a lot of fun doing that in the next weeks. So for now it's just for information purposes. I have to move on or we're going to run out of time. We have two weeks to study this, do nothing but think immigration while we're in our ridings, so that we can really come prepared when we get back.

We move to permits, and this relates to some of the questions on minister's permits and everything else, as a way of eliminating those.

Joan.

Ms. Joan Atkinson: As you know, in the current act, we have minister's permits, and in Bill C-11 we also have minister's permits in clause 24. What we are doing here is trying to be a little more transparent than we currently are, because minister's permit issuance is left almost entirely to guidelines in our current system. What we are doing here is indicating that we may be able to regulate some of the provisions for the issuance of permits, put them in regulations.

But I have to add here that, as we mentioned before, the variety of different circumstances a decision-maker is faced with in the issuance of the

minister's permit does not lend itself to having codified rules that are inflexible and don't allow the decision-maker to deal with the individual circumstances of individual cases. So while we do want to be transparent, and we do want to set in regulations how we issue minister's permits, it is exceedingly difficult, if not almost impossible, for us to regulate every single circumstance in which we would want to issue a minister's permit.

• 1030

The Chair: Okay.

Mr. Steve Mahoney: And yet members must operate with codified rules, with no flexibility whatsoever.

The Chair: Obviously we'll discuss that too. We move to rights and obligations of permanent residents, temporary residents—and members of Parliament.

Ms. Joan Atkinson: I don't think we're regulating rights and responsibilities of members of Parliament in Bill C-11.

The Chair: Thank you very much for saying that, Joan.

Ms. Joan Atkinson: Clause 32 of the bill provides for us to make regulations respecting the rights and obligations. I'll start by saying that the rights and obligations are clearly articulated in the act. What we are putting into regulation is, as we do now, the procedural detail on how we administer those rights and obligations.

Here you have some examples, as with physical presence for permanent residents. In clause 28 of the act the grounds and the obligations are clearly articulated: the permanent resident, to comply with the residency obligation, must have been for at least 730 days in a five-year period a resident in Canada, unless they are working outside of Canada, and so on. What the regulations will do is provide the detail, for example, defining Canadian business for the purpose of residency as corporation partnership or proprietorship resident in Canada for the purposes of the Income Tax Act, where the control and management is in Canada, or a business resident in Canada for the purposes of the Income Tax Act, etc. What we're doing here in regulation is codifying the rules officers must follow when they're making a determination under clause 28.

We'll also, for example, provide some rules concerning how you calculate the 730 days that are clearly enunciated in the act. So the regulations will fill in some of the details as to how decision-makers will make their decisions under those provisions.

Status documents—

The Chair: I have one question. I know there will be many more, but let's just take one here.

Mr. Inky Mark: This is essentially the area that has received the most criticism, the whole issue of permanent residency and residency requirement, and referring to permanent residents as foreign nationals. I can't understand why we would do that, because if you're a permanent resident, you're a permanent resident. If you refer to people of permanent resident status as foreign nationals, it looks very exclusionary and it doesn't make you feel very welcome as being part of this country. We could go back to the old term of landed status. If you're a landed immigrant, then you're still landed. Another problem in this country is, I think, that too many people confuse permanent residency with citizenship. Even on the issue of residency requirement, what precipitated this change? What's wrong with the old system?

Ms. Joan Atkinson: We do clearly distinguish permanent residents in this act. They're defined in the act. Their rights and obligations are clearly articulated in the provisions of the act where it is necessary and relevant. So let me start with that statement.

Why did we change it? Because the current system is opaque, unfair, and subjective, and not transparent. We wanted to move to a system that was clearer, more objective, easier to understand for the client, and easier to administer on the part of the decision-maker. The current system says that if you're outside Canada for more than 183 days in a twelve-month period, you're deemed to have abandoned Canada as your place of permanent residence, unless you can satisfy an immigration officer that you did not intend to abandon.

So what are the problems with that? First, we only allow you to be outside Canada for six months in a twelve-month period. That does not reflect the reality of the world in which we live, in which people travel back and forth, they have businesses, they have family. They need more flexibility in their ability to maintain their residency status, while still being able to travel in and out of the country.

Second, we have this notion of intention to abandon. That is very difficult to administer. It is highly subjective. We talked earlier about visitor visa issuance, and you all expressed concern about how we make those decisions. It's difficult, because the officer relies on his or her judgment. The officer has to make an assessment on the intention of the individual in terms of whether they are likely to return to their home country.

• 1035

Here, in the case of permanent residents, we have a similar sort of situation in our current legislation. What we are doing is moving to make it much clearer and much more objective so that we can get much more consistency. That is important, because we are dealing with the rights of permanent residents to retain that status. So we felt that in this area it was critical that we move to a clearer definition of what we mean when we say that you are a permanent resident and are still a permanent resident even if you are outside of Canada for a period of time.

In coming to the determination of 730 days, we looked at a number of things: What is reasonable in terms of the need for permanent residents to be able to travel back and forth outside of Canada? What are our current requirements for citizenship, and how do we compare retaining permanent resident status vis-à-vis citizenship? What is the nature of the obligation we are asking permanent residents to uphold? In order for them to maintain their ties to this country, in order for them to still have the right to permanent residence, what is the minimum threshold in terms of what we require from them?

We consulted very widely on this particular provision as part of our consultation leading up to the tabling of this bill. This was an issue that was of concern to many people. We took comments from many different stakeholders, NGOs, the bar association, business associations, and so on, and we came up with this provision at the end, taking into account all of those considerations.

Mr. Inky Mark: Would you make that change and not refer to permanent residents as foreign nationals in that same section?

Ms. Joan Atkinson: Permanent residents are foreign nationals. You're either a Canadian citizen or you're not one under the—

The Chair: Joan, there has been an awful lot of discussion that foreign national is a new term we're introducing, and I'm going to leave that big debate until—

Ms. Joan Atkinson: A later time. Okay.

The Chair: Yes. I think we all have some sensitivity around those terms—a new term anyway.

Okay, on status documents...

Ms. Joan Atkinson: Subclause 31(1) of the bill says, as we talked about before, "A permanent resident shall be, and a protected person may be" issued a document. What we intend to do in paragraph 32(f), respecting the regulation-making authority, is provide the rules for the issuance of the permanent resident card. We are not talking about regulating the rights or the obligations or the circumstances, because we've already talked about that.

These regulations will simply provide for the mechanics of how we issue the permanent resident card to permanent residents and how we revoke a permanent resident card, not the grounds upon which a person would lose status, because that's all in the act very clearly.

The Chair: I'm sure we're going to get into it, but can you tell me the rationale for having an expiry date?

We have expiry dates on everything. I can understand that for credit cards, but for OHIP cards and everything else, I wonder why administratively we're going to force hundreds and thousands and millions of people to do this at five- or ten-year intervals.

I understand it's a five-year interval. If you lose the card, obviously, you have to reapply, but what's the rationale on the expiry of the card? It means having a whole administrative structure to renew these things.

Driver's licences are one thing, and credit cards are another, but you don't have to renew your social insurance number. You don't have to renew your citizenship unless you lose it.

Ms. Joan Atkinson: First, we don't think there will be hundreds of thousands and millions, in the sense that 80% of permanent residents become citizens within five years. The vast majority of permanent residents will get it once, and then that's it, because they'll take out citizenship and won't need to renew or get another permanent resident card at the end of the five years.

Why are we looking at an expiry date? It's consistent with any other travel document. Your passport, for example, is only valid for a period of time. You're not issued an indefinite passport.

• 1040 

The permanent resident card is not absolute proof that you're a permanent resident; it's an indication that you are a permanent resident. If the card has expired, it doesn't mean you've lost permanent resident status. What the permanent resident card provides is that if you're outside of Canada and you want to get back into the country, it's like a travel document. It's the document you show to the airline to—

The Chair: I don't think there's any question with regard to why there's a card, because you're right, carrying around that big piece of paper is absolutely ridiculous. It can get lost or can be prone to forgery. I understand the rationale. The question that was raised by a number of people was on the expiry; why an expiry date?

Ms. Joan Atkinson: There are some very pragmatic reasons for it. Like your driver's licence, if you carry that document around with you it deteriorates over time, and there is a need to ensure that you have a card that will be in good shape. So there are some very pragmatic issues just in terms of the shelf life of the card and making sure you have a document that has not fallen apart.

Secondly, while the card is not proof positive of your status, if you are outside of Canada for extended periods of time, we are saying in clause 28 that in order for you to retain permanent residence status, you have to show that you've been physically resident for a period of time. So if you had an open-ended card that had absolutely no expiry dated on it whatsoever, the determination of whether or not you still have permanent resident status would be a lot more difficult for decision-makers to do at ports of entry or in Canada.

Mr. Inky Mark: It's the leaving that is the critical issue, though, isn't it? It's the amount of time you're not in the country. So the terms of the card shouldn't really be that important.

Ms. Joan Atkinson: Elizabeth, do you want to add something here?

Ms. Elizabeth Tromp: I want to add that the card is indicative of status.

If you had a card with an indefinite shelf life, for example, and that card was presented to airline personnel when boarding overseas to come to Canada, how would they know this might not have been a permanent resident who was deported from the country for reasons of serious criminality—someone who was once a permanent resident, is no longer a permanent resident, was deported for serious criminality, and at the time, claimed to have lost his or her card and kept the card? If they had an indefinite shelf life, it would not be indicative of status in those kinds of circumstances. That's just another example.

The Chair: I think we're treading on some very thin ice. I don't even want to get into this. I'm starting to have problems about the significance of this card.

I don't want to get into this debate right now. But the more I hear about it... It was supposed to be convenience; now it's supposed to be a way of checking whether or not people are really, truly permanent residents. Let's leave that for a moment and get on with it.

On the travel document...

Ms. Joan Atkinson: Really, the travel document should probably be called a facilitation document. As you know, in the act we talk about where permanent residents are outside of Canada and their card has expired or has been lost or stolen. They're still permanent residents, but they need

to get back to Canada. The authority is in the act, but this will regulate the mechanics of issuing a facilitation document to allow them to get on a plane to come back to Canada.

We'll obviously need to be satisfied that they're still permanent residents, but as long as we're satisfied that they're still permanent residents, we will issue a facilitation visa or document of some kind to allow them to get back. So the regulations will simply go through the mechanics of that.

The Chair: Okay. On temporary workers and agreements with employers...

Ms. Joan Atkinson: This was a fairly significant piece of the regulatory package.

As in the current act, all the procedural details on how we issue employment authorizations to temporary workers are found in the regulation. That will continue in the new legislation.

As you know, in all the documentation we've been talking about, the objective in our redesigned temporary foreign worker program is to try to facilitate the entry into Canada of the skilled workers that the Canadian economy needs in order to remain competitive.

The whole basic thrust of the new temporary foreign worker program is to measure net economic benefit to the country of bringing in a temporary worker, rather than whether the employment of a specific temporary worker will have some kind of adverse impact on the employment of Canadians. So it's an important shift.

• 1045

The regulations will provide for three of the essential tools that we talk about in the temporary foreign worker redesign; that is, one, sectoral agreements where HRDC, Human Resources Development Canada, will enter into agreements with sectors of the economy to facilitate the entry of temporary foreign workers in exchange for the industry doing its bit to train and develop Canadian workers; secondly, for employer agreements based on the same sort of premise, that in exchange for facilitating the entry of temporary foreign workers to meet specifically defined skill shortages for that employer, the employer will agree to take action to train and develop Canadian workers; third is the potential for occupation lists that can be very specific on skill shortages—it can be very specific for a region where they are experiencing specific shortages.

These tools will provide for the issuance of what we would call a blanket validation. Rather than a case-by-case individual validation for each temporary worker, these agreements or these lists would allow for the issuance of a validation for a particular type of skill or a particular type of job that is in short supply.

The Chair: We have 15 minutes left. Before we leave for the break, I want you to cover especially these two areas that I know are very serious—all of it is serious—in division 4, inadmissibility and loss of status and removal. At least cover those before we leave. Then on Tuesday when we come back we'll continue with the rest it. Perhaps we can just go through this issue of inadmissibility. I'm sure there are a lot of questions on it.

Ms. Joan Atkinson: Hopefully this is relatively straightforward, because for inadmissibility there's very little in regulations. These do speak to core obligations and core rights, and almost all of it is in the act.

What will be in regulation is, again, procedural detail. For example, for clause 35 of the act, the inadmissibility on the grounds of human or international rights violations, we will provide in regulation that persons convicted by the War Crimes Tribunal, or excluded by the IRB on grounds of war crimes or crimes against humanity, or who have been convicted under the Canadian Criminal Code for these crimes, would be deemed to be inadmissible to Canada as human rights or international rights violators, without the need for us to re-establish the specifics of it in an admissibility hearing. I believe this in fact is one of the recommendations that one of the witnesses who came in front of this committee made. So that is going to be captured.

The definition of "senior official" in the provisions of that section will be in the regulations. In terms of defining international rights and sanctions with regard to travel restrictions, we need to have some flexibility here because the specifics of the sanctions vary according to the nature of the sanctions that have been imposed by the international community or by the multilateral organization, the UN, or the Commonwealth, or others. So this provides us with some flexibility in terms of how we'll actually apply that provision.

The Chair: Joan, can I ask you whether or not we define anywhere here what a terrorist is, or what a trafficker in humans is? Obviously we're talking about international rights violators. We know we want to make sure we can apprehend those who would prey on people. But just so it's clear, is there a definition for what a terrorist is internationally, or in law, or what a smuggler is?

We also heard some of our witnesses say there is a difference between someone who picks up 500 or 600 people and puts them on a boat, obviously for the purposes of profit and everything else... But there were an awful lot of NGOs who said they are forced to make some very difficult decisions sometimes when they know a particular refugee is in trouble, is being persecuted; that they in fact are assisting in helping that person flee the country. Just so it is clear, are you leaving those kinds of things to discretion, or are we going to be able to define certain things such as what a human smuggler is or what a terrorist is?

Ms. Joan Atkinson: In terms of smuggling and trafficking, in the offences section of the bill we do deal with what is smuggling and what is trafficking. That's in clauses 117 and 118, where we talk about the offences for persons who are smuggling and persons who are trafficking.

• 1050

We take into account the issue of humanitarian motives, and that's specifically with relation to smuggling more particularly than trafficking. So there definitely is some guidance in the legislation with regard to that.

In terms of a definition of terrorism, no, we will not have in the act or the regulations a specific definition of terrorism. There is no internationally accepted definition of terrorism.

Do you want to add to that, Daniel?

Mr. Daniel Therrien: I would simply say that there is no definition in the current act, and the term has been applied by the courts and they have not seen any problem with the fact that it's not defined.

The Chair: But there must be a working definition, whereby the police can claim or whatever... I'm just trying to have an understanding of how —

Mr. Daniel Therrien: Generally, it's the use of violence to achieve political ends. But what is violence, what are political ends, and what is a common-law crime? There is a lot of uncertainty as to what all of these terms mean.

The Chair: I'm trying to make sure, if all of us agree that the front end has to be the place where we can control admissibility or inadmissibility, that it's clear, because that's where you start to get into judicial appeals as to whether or not you know who you're trying to stop and why you're trying to stop them.

I would hope in legislation or regulation that we're thinking about these, and I'm sure we are. But without definitions do we leave ourselves open to problems?

Mr. Daniel Therrien: As I say, on the concept of terrorism, because there is no internationally accepted definition, we don't have that in the current act. We do refuse admission on the basis of belonging to terrorist groups, and the courts have not seen any problems with the fact that we do not define terrorism as a ground of admissibility.

On trafficking—

The Chair: What about organized crime, as John would probably ask?

Mr. Daniel Therrien: We do define organized crime in the bill.

And with respect to smuggling and trafficking, because we make these offences, it's incumbent upon us to define them clearly, because there are serious consequences, jail and so on, to participating in these activities.

With respect to terrorism as a grounds of inadmissibility, we're not in the criminal law area, and the courts, again, have not seen any problems with the fact that we are not defining the term.

The Chair: Transborder offences.

Ms. Joan Atkinson: This is, as I think we have described before, one of our new inadmissibility criteria. It allows us to deal with individuals who are committing crimes as they cross the border—for example, possession of narcotics or drunk driving. The regulations simply will list those pieces of legislation that will be prescribed for the purposes of transborder offences.

Again, it's a mechanics issue. The grounds for inadmissibility are very clearly articulated in the act.

On rehabilitation, currently there is procedural detail that is set out in the act. The principle for rehabilitation is set out very clearly in Bill C-11 under paragraph 36(3)(c), which says:

> (c) the matters referred to in paragraphs 1(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated.

So the bill clearly sets out the principle that even if you've had a criminal conviction in the past, if we deem you to be rehabilitated, or a certain period of time has passed, you'll no longer be considered to be inadmissible to Canada on criminality grounds.

What the regulations will do is to flesh out and provide some procedural detail around those deemed categories and deemed periods of time—and you have two here. For convictions abroad, persons who were convicted ten years ago of a crime that would be equivalent to a crime that would carry a sentence of less than ten years, and there's no evidence to suggest that they've had any further convictions or problems with the law in the meantime, will be deemed to be rehabilitated. There will be no need for them to make any special application to get approval of their rehabilitation, as is the case currently. They'll simply be deemed to have been rehabilitated.

• 1055 

So this will facilitate, for example, the situation that arises fairly frequently at the ports of entry with an American citizen or American resident who was convicted of drunk driving, for example, 10, 15, 20 years ago. They're inadmissible to Canada, because that's an offence that's equivalent, and they have to apply for rehabilitation in order to become admissible to Canada again. This provision will allow them to be deemed rehabilitated, and there will not be a need for them to go through that cumbersome rehabilitation process. Similarly, for summary convictions, persons will be deemed to have been rehabilitated after five years if they were convicted of two or more offences not arising out of the single occurrence. So it's a facilitation for people who had convictions a long time ago.

The Chair: Okay. We go to the definition of excessive demand.

Ms. Joan Atkinson: This is as in the current act. The provision, the principle, is in the act, that an individual who might reasonably be expected to cause excessive demand on health and social services is inadmissible, and as in the current act, how we administer that is in the regulations. What's new is that our regulations will make those rules much clearer than they currently are.

Excessive demand will be defined in relation to a five-year window, where a person has a condition or a disease that is likely to cause demands higher than the average annual cost for Canadians on the health care system. That cost, which is a readily available figure—it comes to us from Statistics Canada, assessment and surveys of the utilization of health care services by Canada—is estimated currently at $2,800 per year. We are looking at a threshold extended over a five-year period, so your threshold becomes $14,000. If the assessment is that your disease or condition is going to cost more than that, you're inadmissible. If it costs less than that, you're admissible.

The Chair: Judy.

Ms. Judy Wasylycia-Leis: I have two questions on this clause. We've heard from some witnesses on this issue, and the concern has been raised that it seems, the way this is worded and with the planned regulations, a large number of people may be excluded for fairly minor health problems. I'm wondering what you've done to determine whether more people will be found inadmissible the way this clause and the regulations

now read.

The second question has to do with the evidence used to determine medical inadmissibility. How common is it for immigration officials to use non-government sources, such as the right-wing Fraser Institute, to justify inadmissibility on medical grounds?

Ms. Joan Atkinson: Let me answer the second question first. These assessments are not done by visa officers, but by medical officers. Medical officers are professionally accredited and trained medical doctors. They make their decisions based on evidence. The evidence comes from a variety of sources, including the medical literature and information that comes directly from provincial and territorial health care systems. It is regularly updated so that it is current. Our medical officers all undergo annual training. They also have ongoing medical education, just like any other medical doctor in this country. They all subscribe to the medical journals to keep their medical knowledge up to date. So the determination of what a disease or a condition is likely to cost is based on evidence, and that evidence comes from the cost of diseases and conditions in Canada currently.

As to your first question, are these provisions likely to result in more people being determined to be medically inadmissible? We have to look at, not just this regulation, but how we are going to modernize our immigration medical examination process. In implementing this new provision, part of our intention is to put in place additional routine tests, which will allow us to make clearer decisions on things like high blood pressure and what is the impact of high blood pressure on heart disease. We need to have a better assessment of individuals who come to us in order to decide whether their heart condition, for example, is above or below the threshold. It's not clear to us at this point whether this is going to result in more people being determined to be medically inadmissible or less. Certainly, we want to have a better process in place so that we can make clearer assessments of their medical conditions.

• 1100

Mr. Inky Mark: Are there any exceptions or options for an individual who wants to sponsor a handicapped child to this country? Is there a provision to guarantee the money for that person so that they can have a person...

Ms. Joan Atkinson: No, there is not. Under the Canada Health Act, every permanent resident is entitled to access to the Canadian health care system.

Mr. Inky Mark: Is that the problem?

Ms. Joan Atkinson: For a Canadian resident who sponsors their dependent child, as Mark has just reminded me, under the provisions of subclause 38(2), that dependent child will be exempted from excessive demand inadmissibility. That situation is covered in the bill. They'll no longer be refused under excessive demand if they're being sponsored as a dependent child of a Canadian resident.

Mr. Inky Mark: Do you think it's reasonable to put in place the option that people can take care of their needs through a guarantee, a bond, or whatever counts in the bank?

The Chair: If you could convince the provincial government, that would...

Ms. Joan Atkinson: That gets us into the territory of the obligations and rights under the Canada Health Act to have access to the health care system.

Ms. Jean Augustine: My question follows up on Inky's. I'm thinking of one case where there are five or six adult members in a family. He has sons and daughters. They're all doing well. Their mother has been left in the old country. Somehow there are enough resources within the family, they tell me, to pay for whatever services might be required in *x* number of years. She is deemed medically inadmissible because of hearing problems, heart problems, and whatever else. It's a very heartbreaking situation for the family because due to their job situations, no one is able to go back and take care of the mother. The mother is over there by herself. We in the front line hear about those kinds of things, and it's really heartbreaking when you have to deal with them.

Ms. Joan Atkinson: I don't disagree at all that those are very difficult cases to deal with.

The purpose of the medical inadmissibility provision is to maintain the health and safety of Canadians and the integrity of our publicly funded health care system. We have deliberately made exemptions for sponsored spouses, partners, and dependent children in the interest of family reunification and for refugees that we select overseas in the interest of our humanitarian commitment to offer protection to those who are in need of it. That's as far as we feel we can go in terms of the other side of the equation, which is the integrity of the health care system.

The Chair: We'll hear about loss of status and removal, and then we'll call it a day.

Steve, listen up. This is your problem here.

Mr. Steve Mahoney: What makes you assume I was not listening up?

The Chair: I wasn't.

Ms. Joan Atkinson: Again, fundamental rules and rights are in the bill. What we are talking about in terms of the regulations is the mechanics of the issuance of removal orders. What we are doing, for example, in regulation is to define by category of inadmissibility, which is clearly the inadmissibility grounds in the bill, the consequences attached to a removal order on future application to enter Canada.

As you know, now we have different types of removal orders, if you will. You have deportation, which is a permanent bar from coming back to Canada unless you get the consent of the minister to return; we have exclusion, which is a one-year bar from re-entering Canada; and we have voluntary departure. Voluntary departure is always our preferred method of asking someone to leave the country.

• 1105

In the case of a minister's permit holder, at the expiry of their permit we ask them to voluntarily depart. If they do not voluntarily depart, they may become subject to a removal order. If we don't know where they are and they have not come forward despite our request for them to do so

to be assessed, then we may issue a warrant for their arrest.

As you quite correctly pointed out, Mr. Mahoney, we have established some priorities to help us deal with the removals that are most critical in terms of maintaining the safety and security of Canada. Our first priority is criminals, removing those who we think pose the greatest danger to Canadians. The second is refugee claimants who are on social assistance—refused refugee claimants, let me add—

The Chair: Thank you for the clarification.

Ms. Joan Atkinson: —those who have been determined not to be in need of protection and who have gone through the system and exhausted all of their appeals and now we would like them to leave. If they are not prepared to leave, they are our second priority of removals. Lastly, there are the refused refugee claimants. Beyond that are overstays and minister's permit holders who have not left, and everyone else then falls underneath that.

The Chair: Primarily, these removal orders are done by immigration officers. Is that right? For the most part they're not done by the RCMP or police officers.

Ms. Joan Atkinson: Absolutely. The vast majority of removal orders are done by senior immigration officers after due process and all considerations.

The Chair: I have a question. If CSIS people screw up, there's SIRC. If the RCMP screw up, there are complaints. If people have complaints with regard to the actions of police officers, they can take it to a tribunal of some sort. If someone has a complaint with regard to an immigration officer, where do they go? Is there a tribunal or a complaint mechanism in place?

Ms. Joan Atkinson: There are a couple of mechanisms. First, any decision made by an immigration officer is subject to judicial review with leave of the Federal Court. If the Federal Court considers that the case is meritorious—that is, due process has not been followed, natural justice has not been followed, charter rights have been violated—they will hear the case and have an airing of the process by which a decision was arrived at.

Secondly, as many of you are aware, the minister has said that she will also receive complaints about the way individual cases have been determined. Beyond that, it's also true that senior management in our regions do receive complaints about how individual cases have been dealt with.

So some legal remedies are available to people who feel they have been treated unfairly by immigration officers, and more informal mechanisms are available as well.

The Chair: That's it. Oh, sorry, Judy.

Ms. Judy Wasylycia-Leis: I know there's no time for questions on this part.

The Chair: Which part are you talking about?

Ms. Judy Wasylycia-Leis: I'm talking about this whole issue of loss of status. We haven't had a chance to get an explanation with regard to some of the testimony, such as the situation where someone came here as a baby and got into trouble with the law at the age of 19 and was sent back. It's hard to rationalize that in any definition, and I just want an explanation. How does one justify that?

The Chair: It might not be a bad idea to end with that very good question.

As you know, we'll be back with the department on Tuesday and with the RCMP and CSIS on Thursday. Then we will, hopefully, be allowed to travel the following week. We're still working on that.

Mr. John Herron: That's after we've heard from the RCMP and CSIS.

The Chair: We hope to, yes.

Ms. Joan Atkinson: I know this has been a major concern for a number of people. Let me say, first of all, that it is not true that there is automatic deportation of permanent residents if they have a criminal conviction. That is not true.

• 1110 

Clause 44 of the bill says that minister's delegate or the decision-maker may write a report. If they determine that someone is inadmissible, the minister or the minister's delegate may decide to take enforcement action.

In the case of permanent residents, there is a great deal of weighing evidence and considering all the factors before we decide to take enforcement action. In actual fact, only one out of five permanent residents who arrived here as children—and subsequently got into trouble with the law and have serious criminal convictions—are even taken forward for enforcement action. Only in the most egregious of cases do we decide to go forward and pursue a removal order.

So I think it's important for people to recognize that we have the discretion, right at the beginning of the process, to consider whether or not to even take the next step. And in the vast majority of cases, we don't take that action. We recognize their connections to Canada.

We do issue them a warning letter saying "You've been convicted of this offence. You are clearly in an inadmissibility situation. We have decided not to take action against you as a result of your very significant ties to this country, but please try to keep out of trouble—because if you get into trouble again, we're going to have to take another look at it."

The Chair: To use Judy's example, if you come here as a child, and if for some reason you've not got citizenship—which is the ultimate protection—we get into this grey area. If you're a permanent resident, with all the rights and privileges under the charter—well, you've just indicated that if they get into trouble with a serious criminal conviction... I'd like to know what "serious" means. How do we define it? Can they be thrown out of the country after spending all their lives here? That's absurd.

Ms. Joan Atkinson: We're talking about serious criminal convictions. We're talking about individuals who have been through the criminal justice system, who have had the benefit of all the checks and balances in the system, and the system has determined that the crime was serious enough and the gravity of the situation was such that a sentence of two or more years should be imposed.

So those are serious criminal convictions—not shoplifting, not drunk driving, not simple fraud. These are drug traffickers, violent criminals, sexual predators. These are people who have been through the criminal justice system, and that system, with all of its checks and balances, has said, "This is a serious enough issue that we're going to imprison this person for two years."

The current system has been criticized for being very cumbersome and not very fair. We have the danger opinion process, in which the minister, or the minister's delegate, decides whether or not the person poses a danger to the public.

What we have done in Bill C-11 is establish a much more objective, transparent threshold that clearly underlines the seriousness of the criminal matter. The criminal justice system has determined that seriousness, and on that basis we decide to take away appeal rights.

But again, all factors relating to the crime—its nature and the circumstances surrounding it, assessing the family ties to Canada, what home country the person would be returned to—are all weighed before we even decide to take enforcement action in the first place.

The Chair: Anita, then Jerry.

Ms. Anita Neville: I haven't had as much experience as others here have had, but could you get us some examples in this case, some numbers? The experience and representations I've had are not what I would view as egregious. I would certainly be interested in more information on this, please.

The Chair: Jerry.

Mr. Jerry Pickard: My point was exactly what Anita asked: are we talking five a year or one a year? It's important for us to know what we're really referring to here.

I also think a lot of people would question a two-year sentence. That could just be an arbitrary decision by the courts, not necessarily egregious. I think there is a matter of personal interpretation in our courts—different sentences given to the same crime.

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Ms. Joan Atkinson: I'm not going to comment on the arbitrariness or otherwise of the courts. I would say that all persons in Canada—whether they're citizens, permanent residents, refugee claimants, students, visitors—whatever their status, they're protected by the charter. In our criminal justice system and in our administrative law system, including the immigration system, everyone enjoys the protection of the charter. That's an absolute fundamental.

In terms of numbers, I can respond very quickly: every year, only approximately 40 reports are written on people who came here as young children, before the age of five. Of those 40 reports, only five are taken to inquiry. So of all the permanent residents who arrived here as very young children and later engaged in serious criminality, we only decide to pursue the ultimate option of removal in five cases per year.

The Chair: Thank you. Canadians are just very good law-abiding citizens. Whether you call them citizens or permanent residents, we just happen to be that kind of people.

Therefore the question becomes, why do you talk about a particular regulation of rights that might in fact cause some problems to the great majority of those people, who, as you said, are law-abiding?

Anyway, let's leave it at that. We're coming back.

Ms. Judy Wasylycia-Leis: Will we get answers to the questions we tabled on Tuesday, before the break? There were four questions.

The Chair: In fact, there are some questions submitted here. I forgot to tell you that we have some international comparisons for you. We'll have to review what some of those questions were, Judy, and make sure we have them before we're back. They are in some of the things we've distributed for you.

Thank you so much, Daniel, Mark, Joan, Elizabeth, and Jennifer.

We're adjourned until two weeks Tuesday.