HOUSE OF COMMONS
CANADA

BUILDING A NATION

The Regulations under the *Immigration and Refugee Protection Act*

Report of the Standing Committee on Citizenship and Immigration

Joe Fontana, M.P.
Chairman

March 2002

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Our task could not be completed without the valuable cooperation from research officers of the Parliamentary Research Branch, Benjamin Dolin and Margaret Young. The Committee also wishes to acknowledge the Clerk, Jacques Lahaie and Lucie Poulin for the administration and support throughout the course of this study.

The members of the Committee also wish to express their appreciation to the staff of the Committees Directorate, the Translation Bureau of Public Works and Government Services Canada and the support services of the House of Commons who have provided logistic and administrative support to elaborate this report.

Finally, the Chairman wishes to thank the members of the Committee for the numerous hours they dedicated to study this question and to prepare this report.

THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

THIRD REPORT

In accordance with its permanent mandate under Standing Order 108(2), your Committee has agreed to conduct a study on proposed regulations made under the *Immigration and Refugee Protection Act* and reports its findings and recommendations.

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INTRODUCTION

On December 15, 2001 Citizenship and Immigration Canada (CIC) prepublished in Part 1 of the *Canada Gazette* the first "tranche" of proposed regulations to implement the new *Immigration and Refugee Protection Act.* The purpose of prepublishing the Regulations is to allow interested members of the public a period of time to study them and to submit written comments to the Department before the Regulations are finalized and come into force.

This notice and comment process is an important one. It allows individuals and groups an opportunity to comment on the details of proposed regulations that the Minister and departmental officials may have previously described only in general terms or, in some cases, may not have discussed at all. It provides a period of time in which minor mistakes, in what is a very complicated and lengthy document, can be identified and corrected. Moreover, it permits contentious issues to be raised and reconsidered before they become law.

Throughout its study of Bill C-11, the *Immigration and Refugee Protection Act* (the Act), this Committee took a keen interest in the contents of the Regulations. The Committee was informed repeatedly that the Bill was framework legislation; that is, it sets out the guiding principles and skeleton of the Program, leaving most of the details to be filled in by regulations made by the Governor in Council.

In view of the importance of the Regulations, the Committee requested an indication of the Department's general intentions during its study of Bill C-11. This was provided in March 2001. Questions relating to the Regulations, asked by both Committee members and witnesses, also came up repeatedly during the hearings on the Bill. Thus, with this background, the Committee decided to conduct a study of the proposed regulations in order to provide Parliament and the Department with its own views at this important final stage.

In addition to providing an avenue for the Committee to have input into the regulatory process, the Committee's hearings served another important purpose. Without the involvement of the Standing Committee, the notice and comment period would have had no public aspect. The Committee has been able to provide a forum where knowledgeable people could present their concerns and be questioned by Committee members. This was a valuable learning exercise in itself.

Despite conducting our study in a relatively limited time period, the Committee heard oral presentations from 45 individuals and groups, as well as officials of the Department of Citizenship and Immigration, and received over 50 written briefs. Through the testimony, the Committee had an opportunity to identify the common areas of concern, to assess their significance, and to make the following recommendations as to

what changes should be considered by the government. Naturally, our witnesses focused on those areas where they had concerns, and this report will do that as well. This should in no way be construed as a criticism of the immigration and refugee protection program generally. The Committee continues to believe that it is a model for the world.

The Minister has clearly indicated that our recommendations will be given significant weight and we appreciate the open and receptive attitude he has demonstrated. The Committee would like to take this opportunity to invite the Minister and his officials to appear before us again following the revision of the Regulations.

PART I: THE NEW SELECTION SYSTEM FOR SKILLED WORKERS

A. RETROACTIVITY

Of the various issues brought to the Committee's attention, the retroactive nature of the proposed selection system was the most commonly raised and urgently pressed.

The Department has proposed (as revised on February 26, 2002) that skilled workers who applied *before December 17, 2001* (the first working day the proposed selection system became public) and who have not received a selection decision before June 28, 2002 (the target date for implementation of the Act and regulations) continue to be selected under the current criteria until the end of this year. Those who have not received a selection decision by that time will be assessed under the new criteria, but with a proposed pass mark of 70. This recognizes the fact that some applicants who probably would have been accepted under the current system may not be accepted under the new one. The Department also announced that those who applied before December 17 may, if they wish, have their application fees refunded if their files have not been paper-screened. The Committee strongly supports that announcement.

The Committee is pleased that on February 26, 2002 the Minister revised the original proposal, which had been to subject all pre-December 17 applicants who had not received a selection decision by the time the Regulations came into force to the new criteria, with a lowered pass mark of 75. Clearly, the government was listening to the concerns of the Committee and the public.

We do have some difficulty with the December 17 date. Choosing that date seems to assume that communication of a government decision is received instantaneously by all potential immigrants and that they can thus act accordingly and adjust their expectations. This is clearly not the case. The Committee feels that a date of December 31, 2001, while not without difficulty, is at least a little more realistic.

The Department's decision to continue processing files in the inventory until the end of 2002 means that the impact will be felt by far fewer people than would have been the case originally. The Committee was encouraged by the Department's testimony that by the end of this year some 90,000 files in the current inventory will have been processed. Unfortunately, by January 1, 2003 there will still be approximately 30,000 files remaining.

Although the Committee appreciates the government's responsiveness on this issue, we have concluded that the revised proposal does not go far enough. Those who

will not have received a selection decision before the end of 2002 have the same hopes and dreams of immigrating to Canada as those who will receive a decision before that time. We believe that more of an effort can and must be made to process as many of these applications as possible by extending the deadline by three months.

A deadline of the end of this year will have a differential impact depending on the location of the post abroad. Applicants at posts with faster processing times will have a better chance of receiving their decision before the deadline than those at posts with longer time frames. Yet it must be admitted that the applicants at both posts could be equally qualified.

The Committee also notes that if the Department has concluded that it can administratively process skilled workers under two sets of criteria for a period of six months, there is no inherent reason why it cannot continue for a slightly longer period of time. We note also that the new selection system requires information that will not necessarily be on the files of applicants in the inventory. Obtaining and assessing that information will take additional processing time, and could require a higher than normal interview rate. Thus, to continue under the existing system for this group for a further period could save time administratively, as well as being fairer to more applicants. We therefore recommend that processing of applications received before December 31, 2001 should continue until the end of March, 2003.

RECOMMENDATION 1

All skilled worker applications received before December 31, 2001 should be processed under the existing selection criteria until March 31, 2003.

An extension of processing time to the end of March will be of little or no value if processing the inventory is not made a very high priority of the Department. This is particularly true in high-volume posts where processing times are long. It is unfair and inequitable not to address the particular challenges posed by those posts.

What will be necessary to achieve the utmost fairness and equity in dealing with the existing inventory between now and March 31, 2003? We believe four things are essential. First, there must be a corporate commitment — one that extends to all employees — to processing these files on a priority basis. All staff involved in dealing with the inventory must realize that every application represents individuals whose hopes and dreams for the future are resting on their plans to immigrate to Canada, plans that were realistic at the time they submitted their applications.

When the Minister appeared before the Committee, he stressed his desire to look forward rather than backward, noting that the front windshield of a car is much larger than the rear-view mirror. In this vein, the Committee believes that our skilled worker applicants

also wish to look ahead. Staff should share that desire to the fullest extent possible. They should recognize as well that Canada's reputation for fairness is at stake.

The Committee's next recommendation relates to processing procedures. Staff at each post with a significant skilled worker inventory should reassess their general approach to interviews — when they are essential and when they can be waived. The more applicants that can safely be given a positive selection decision on the basis of the documents submitted, without the necessity of an interview, the faster the inventory will be cleared. Officers should scrutinize every file carefully and ask the question: "Is the information I would be seeking in a personal interview *essential* to my selection decision?" Of course, we speak only of selection; criminality and security assessments must never be compromised.

The third recommendation concerns resources. A commitment to clearing the backlog is of little value without the necessary resources. This can mean an internal arrangement of staff in a mission; it can mean deployment of teams of officers from posts with a lower inventory to those posts where the challenge is greater ("SWAT teams"); and it can mean new resources. We feel confident that the Minister can make an excellent case to his colleagues that fairness and equity to individual applicants, as well as maintaining Canada's reputation abroad, require that additional resources be marshalled to get the job done.

RECOMMENDATION 2

Citizenship and Immigration Canada must make a corporate commitment to process its skilled worker inventory on a priority basis.

RECOMMENDATION 3

Staff at each post with a significant skilled worker inventory should reassess their general policies regarding personal interviews — when are they essential and when can they be waived.

RECOMMENDATION 4

Special teams ("SWAT" teams) should be used to clear backlogs at missions with large inventories to ensure that they are processed expeditiously and that applicants are not disadvantaged by their place of application.

RECOMMENDATION 5

In the interests of fairness and equity, the government should increase the resources dedicated to processing the applications of skilled

workers in order to minimize the impact of the revised selection criteria on the skilled worker inventory.

B. THE POINT SYSTEM

The Committee heard concerns about almost all aspects of the skilled worker point system. It became clear that the system as presented in the proposed regulations is not satisfactory and must be changed. The vast majority of the skilled workers needed by this country will not be able to qualify for permanent residence either as a result of the point distribution in the grid or because the proposed pass mark of 80 is simply too high. Numerous examples were provided of highly educated technology professionals, fluent in an official language, who would not have a successful application. And skilled trades people would fare even worse.

In this section, the Committee will express its specific concerns and provide recommendations for change in respect of individual criteria and the overall pass mark. It should be clear, however, that a piecemeal response from the Department will not be acceptable. If we expect to meet our target immigration levels, many aspects of the point system must be adjusted in a manner that addresses the Committee's many concerns. At the conclusion of this section, a point grid is suggested based upon our findings and a pass mark is proposed that, using the Committee's grid, will address Canada's need to attract skilled workers.

1. Education

One of the criteria in the grid that garnered much discussion and criticism was the allocation of points for different levels of education, particularly in respect of trades people. Without exception, the witnesses who addressed this topic confirmed that the proposed regulations would effectively shut the door on the skilled trades. To be able to obtain the equivalent point score as someone with a university bachelor's degree, the carpenter, the tool-and-die maker, or the electrician would have to have a diploma, trade certificate or apprenticeship requiring 3 years of full-time studies, and a total of 15 years of full-time study or training. Fifteen years of full-time study and training, many witnesses confirmed, is virtually unheard of in the trades. Many countries focus vocational training at the upper secondary school level and trades people generally have 11 to 12 years of education. The Committee believes that the requirement of a total number of years of study in addition to the degree, diploma, trade certificate or apprenticeship period of study should be deleted.

RECOMMENDATION 6

The requirement that an applicant complete a specified total number of years of study when assessing educational credentials should be eliminated.

It is also problematic to penalize trades people whose apprenticeship or trade program required only a year or two of study instead of three or more. Some trades programs require more classroom or study time than others, and the length of time involved in qualifying for a particular trade may have little to do with the needs of Canada's labour market. To address this, the Committee proposes awarding 15 points for diplomas, trade certificates and apprenticeships that require one or two years of full-time study. As we feel that the inclusion of "total years of study" is unnecessary but wish to recognize the potential benefit of a high school diploma for trades people, the Committee suggests that the five points for a completed secondary school diploma be awarded cumulatively for those with trade qualifications that required one or two years of study.

RECOMMENDATION 7

Fifteen points should be awarded for diplomas, trade certificates and apprenticeships that require one or two years of full-time studies, and an additional five points should be awarded to applicants in this group who have a high school diploma.

The Committee is also concerned that the proposed regulations do not clearly recognize second degrees at the undergraduate level. Lawyers, for example, will typically have an undergraduate degree in addition to a Bachelor of Laws. Similarly, most teachers obtain a first degree before pursuing a Bachelor of Education. A second undergraduate degree should be awarded the same number of points as a Master's degree.

RECOMMENDATION 8

An applicant with two or more undergraduate degrees should be awarded 25 points under the education criterion.

Some witnesses also raised the definition of "full-time" study or training as an issue. Clause 67(1) of the proposed regulations defines full-time as meaning 15 hours of instruction per week. The Committee heard that in many universities, including those in Canada and the United States, full-time study involves classroom instruction of only 11 or 12 hours per week. The same may be the case with apprenticeship and certification programs in the skilled trades. It should also be clear in the Regulations that co-op programs are counted as full-time studies.

RECOMMENDATION 9

"Full-time" in relation to studies or training should be defined as at least 12 hours of instruction per week, and should include co-op programs.

2. Language

Three main issues arose in the testimony regarding the points awarded for proficiency in one or both of Canada's official languages. To begin with, the Committee is concerned that the Regulations would not award any points for a basic proficiency in an official language. Another concern was the gap between the points awarded for "high proficiency" compared to "moderate proficiency" in the applicant's first official language. Third, the gap between the points awarded for proficiency in the first language and the points awarded for proficiency in the second language does not, in the Committee's view, adequately reflect the importance of bilingualism in Canada.

a. Levels of Proficiency

The proposed grid treats an applicant with basic official language proficiency the same as an applicant with no official language abilities whatsoever. In the Committee's view, this does not recognize the fact that new immigrants with a basic understanding of French and/or English will likely improve their linguistic skills quite rapidly once in Canada. There should therefore be four categories of language ability: high proficiency, moderate proficiency, basic proficiency and no ability. This will require the creation of a definition that distinguishes between basic and no proficiency in clause 68.

RECOMMENDATION 10

Four levels of language ability should be included in the point grid: high proficiency, moderate proficiency, basic proficiency and no ability.

b. First Official Language Proficiency

The proposed regulations award 16 points for "high proficiency" in the first official language, only 8 points for "moderate proficiency," and zero points for "basic proficiency."

The Committee heard that emphasizing high proficiency to such a degree will exclude many of the skilled workers Canada wishes to attract. Fluency in an official language is not necessarily the best indicator of potential success in Canada, particularly for the skilled trades. The Committee is also mindful of the fact that language skills will likely improve once in Canada, particularly for those who already have a moderate command of English or French.

RECOMMENDATION 11

Twelve points should be awarded for moderate proficiency and four points should be awarded for basic proficiency in the applicant's first official language.

c. Second Official Language Proficiency

It was also suggested to the Committee that the gap between the points awarded for high proficiency in the first official language and the points awarded for proficiency of any degree in the second official language does not recognize the importance attached to bilingualism in Canada. High proficiency in the second official language, which would obviously include complete fluency, is worth only 4 points. No points are awarded for moderate or basic proficiency in the second language.

The Committee finds it odd that no value is placed on moderate proficiency in the second official language, but is aware that increasing the points awarded in the second language category would affect the overall weight of language in the grid. It was suggested that this could be addressed through the use of adaptability points.

RECOMMENDATION 12

The points awarded for high proficiency in the applicant's second official language should be increased to eight, the points awarded for moderate proficiency should be increased to six and four points should be awarded for a basic proficiency in the second official language. The maximum total points available for language skills should remain at 20 with additional points being available under the adaptability criterion when an applicant has a high proficiency in both official languages.

3. Age

The points awarded for age would not change from the current system wherein emphasis is placed on applicants between the ages of 21 and 44. Some witnesses argued that the top age limit for the maximum points (10) should be increased from 44 to 50 to recognize that people are remaining in the workforce for longer periods. The Department indicated that demographics merit a focus on younger workers but it is equally true that a projected stagnation of growth in Canada's labour force makes it important to attract a wider spectrum of workers.

RECOMMENDATION 13

Ten points should be awarded for applicants between 21 and 50 years of age, with a decrease of 2 points for each year younger or older.

4. Adaptability

The Committee supports the replacement of the current factor "personal suitability" with the use of adaptability points relating to specific, objective factors. It is also laudable that clause 64(3) of the proposed regulations maintains the possibility of positive discretion on the part of the visa officer. Applicants will thus be able to have some security when estimating their likely point total and those who fall short may be granted permanent residence should a visa officer determine that they would nonetheless be capable of successful economic establishment in Canada.

Various suggestions regarding other important factors relating to the likelihood of successful establishment were offered by witnesses as possible point sources under this criterion. Concerns were also expressed in respect of some of the adaptability factors in the proposed regulations.

a. Concerns Regarding Proposed Adaptability Factors

One concern that was expressed by some witnesses relates to the 5 points for an informal job offer in Canada. It was suggested that this factor would be subject to abuse and that, in fact, shell companies are already being established with the intention of providing fraudulent job offers.

RECOMMENDATION 14

Adaptability points should not be awarded for an informal job offer in Canada.

The maximum points available for adaptability was also of concern. It was suggested that 10 points does not adequately recognize the value of adaptability factors in respect of successful establishment. The Committee concurs.

RECOMMENDATION 15

The maximum points available for adaptability should be increased from 10 to 15.

b. Suggestions for Additional Adaptability Factors

Numerous suggestions for additional adaptability factors were received and the Committee found many to be quite compelling. The factors suggested recognize the importance placed on various attributes that would likely indicate a greater ability to successfully establish in Canada. After much deliberation, the Committee has decided that the following should be included in the point system.

RECOMMENDATION 16

Five points should be awarded under adaptability for those who do not have arranged employment in Canada but who would otherwise meet the requirements of special sectoral agreements, such as the pilot project for software professionals.

RECOMMENDATION 17

Seven points should be awarded under adaptability for those who can satisfy an immigration officer that they intend to settle in a region of low immigration. This should be monitored for effectiveness on an ongoing basis.

RECOMMENDATION 18

Five points should be awarded under adaptability for those who have the support of a local community organization and can provide a settlement plan.

RECOMMENDATION 19

Five points should be awarded under adaptability for those who have previously visited Canada, provided they have not received points for previous study or work in Canada.

RECOMMENDATION 20

Four points should be awarded under adaptability for those who demonstrate a high proficiency in their second official language.

5. Pass Mark

Given the point distribution for the criteria contained in the proposed regulations, most witnesses were critical of a pass mark of 80 points, which the Department indicated in its impact analysis was likely to be the pass mark. Clearly, 80 points is inappropriate

given the grid as it currently stands, but the Committee is confident that changes will be made. Indeed, the Minister has indicated his willingness to consider alterations proposed by this Committee and other interested parties.

The Committee was troubled by the various examples provided of desirable skilled workers who would not qualify under the proposed regulations. In fact, some witnesses argued convincingly that a pass mark of 80 with the proposed grid amounts to a moratorium on immigration. If a 30-year-old computer systems analyst with a bachelor's degree who is fluent in an official language and has four years of experience would not be successful unless she obtained the maximum points for adaptability or had a job validation, the proposed pass mark is too high. Equally, if a similarly situated skilled trades person has almost no chance of success, the pass mark is too high. After much consideration, it was determined that an appropriate pass mark for the grid proposed by the Committee is 70 points.

RECOMMENDATION 21

Following the adjustment of the selection system criteria as the Committee has recommended, the pass mark should be set at 70 points.

RECOMMENDATION 22

After two years, the Department should analyze the impact of the changes to the grid and the pass mark and report its findings to Parliament.

6. Point System Grid

EDUCATION			Maximum 25
Doctorate, Master's or 2nd Undergraduate Degree			25
Bachelor's Degree or Diploma/Trade Certificate/Apprenticeship requiring 3 years of study			20
Diploma/Trade Certificate/Apprenticeship requiring 1 or 2 years of study			15
High School Diploma*			5
* The five points for a high school diploma is awarded cumulatively *only* for those with a Diploma/Trade Certificate/Apprenticeship requiring 1 or 2 years of study			
OFFICIAL LANGUAGES	**1st Language**	**2nd Language**	**Maximum 20****
High Proficiency	16	8	
Moderate Proficiency	12	6	
Basic Proficiency	4	4	
No Abilities	0	0	
** Points in excess of 20 become adaptability points (See Adaptability – 2nd Official Language, below)			
EXPERIENCE			**Maximum 20**
One to four years of recent skilled work experience			5-20
ARRANGED EMPLOYMENT			**Maximum 10**
Arranged employment in Canada approved by HRDC			10
AGE			**Maximum 10**
21-50 years of age at time of application			10
Less 2 points for each year age over 50 or under 21 years			
ADAPTABILITY			**Maximum 15**
Spouse's or common-law partner's education			3-5
Minimum of 1 year full-time authorized work in Canada			5
Minimum of 2 years full-time post-secondary study in Canada			5
Family relationship in Canada			5
Eligibility for arranged employment under special sectoral agreement			5
Destination is a region in Canada of low immigration			7
Support of local community organization and a settlement plan			5
Second official language (see official languages, above)			2-4
Previous visit to Canada (unless points rec'd for study/work in Canada)			5
TOTAL			**Maximum 100**
PASS MARK			**70**

7. Settlement Funds Required for Permanent Residence Applicants

Clauses 64(1)(*b*) and 126 of the proposed regulations require that applicants demonstrate that they have sufficient funds to establish in Canada. The measure to be used is the low income cut-off ("LICO") figures set by Statistics Canada. The Committee heard that the amount currently required is $10,000 for the principal applicant, plus $2,000 for each dependent, and that use of the LICO will approximately double the required settlement funds for a family of four.

Witnesses argued that the amount required under the proposed system is much too high and will adversely affect many desired applicants, particularly those from developing countries. It was suggested that only a six-month (not one year) LICO requirement should apply for applicants not already in Canada.

RECOMMENDATION 23

Clause 64(1)(*b*) should be amended to provide that the minimum settlement funds required for skilled worker applicants and their family members should be sufficient to support them for a period of six months after they enter Canada, not one year, using the LICO figures.

8. Ongoing Applicability of the Selection Criteria

Several witnesses brought clause 65 to the Committee's attention. It states: "For the purposes of [visa issuance] the requirements and criteria set out in [the selection system] must be met at the time an application is made as well as at the time the permanent resident visa is issued." They pointed out that this would allow the government to change the selection criteria, including the pass mark, after an application had been made, introducing unacceptable uncertainty into the selection process.

Altering the selection system after an individual has made an application is unfair and cannot be tolerated. The clause must be redrafted to ensure that this will not happen. That said, it may be reasonable to require that an applicant meet most of the requirements of the selection system before a visa can be issued. For example, using the criteria as currently proposed, if an applicant received 10 points under adaptability because of the spouse's education and job experience, but by the time the visa was to be issued the couple had separated, those points should probably be re-evaluated. If that same person had upgraded their education, that too should be taken into account. On the other hand, a person who received a certain number of points for age at the time of application should not be penalized merely because the processing time was two years. We have concluded that this clause needs to be redrafted to better reflect the variety of situations that can occur.

RECOMMENDATION 24

Clause 65 regarding the continuing applicability of the selection criteria should be redrafted to state that the selection system and pass mark in effect at the time of an application must be used at all processing points, and to clarify which of the criteria must continue to be met at the time the visa is issued.

C. RECOGNITION OF FOREIGN CREDENTIALS

An issue that is not addressed by the proposed regulations but is one that arose repeatedly in the course of the Committee's hearings is the problem faced by a significant number of immigrants who come to Canada expecting to work in their field of expertise. Because they were accepted for permanent residence based on a specific occupation, many immigrants are under the impression that they will be able to find employment in that occupation in Canada. This is not an unreasonable assumption, particularly given the current system that is ostensibly based upon Canada's workforce requirements. The proposed point system, while less restrictive in terms of the specific occupations that are eligible for permanent residence, still does not address this problem.

What consistently happens, and what will certainly continue to occur, is that skilled workers arrive in Canada expecting to be able to apply for jobs as engineers, electricians or physiotherapists, only to discover that licensing requirements preclude them from seeking work in their profession or trade. Although the Regulation of professional and trade accreditation is primarily within the jurisdiction of the provinces, the Committee feels that more can and should be done by the Department. Not only should prospective immigrants be told of the possibility of licensing requirements and advised to discuss such issues with the appropriate regulatory bodies before applying to immigrate, the federal government should act as a facilitator in assisting licensing bodies to determine foreign equivalencies.

RECOMMENDATION 25

All applications for permanent residence in Canada should clearly indicate that to work in one's profession or trade, accreditation or certification from a licensing body may be required and that applicants should contact the appropriate agencies to determine their likelihood of obtaining such accreditation or certification.

RECOMMENDATION 26

The federal government should provide assistance to the regulatory bodies that govern admission to skilled trades and professions in Canada to determine foreign equivalencies and to facilitate the entry of skilled worker immigrants into the labour market.

RECOMMENDATION 27

The recognition of foreign credentials should be given priority when the federal and provincial governments meet to discuss immigration issues. Partnerships between the federal and provincial governments and licensing bodies should be pursued.

PART 2: ISSUES RELATING TO THE FAMILY

A. SPONSORSHIP UNDERTAKINGS

Currently, family class sponsorship undertakings last for a period of 10 years. The proposed regulations create various time periods:

- for spouses: three years;
- for dependent children who arrived before they were 12 years of age: until age 22;
- for dependent children who arrived at 12 years of age or more: 10 years; and
- for all other cases: 10 years.

Some witnesses argued that there should be no family class undertakings at all. They felt that such undertakings are not necessary because all provinces and territories have laws regarding family support obligations. However, if there are to be undertakings, it was argued that the maximum period for all sponsored relatives should be three years.

Advocates for women pointed out that the existence of an undertaking could be used as a tool against vulnerable women, who are sometimes led to believe that they must continue to endure difficult domestic situations. In essence, undertakings may be seen as implying a dependency relationship. Others pointed out that an immigrant family who arrived with a baby would be required to be financially responsible for 21 years, even if the child required social assistance because of a disability.

The Committee is unable to agree with those witnesses who argued that sponsorship undertakings should be eliminated. Although we welcome the Department's proposal to reduce the length of undertakings for spouses and common-law partners from 10 years to 3, we feel that the proposal for dependent children is overly complex and potentially unfair. We have concluded that an undertaking should not extend past the age of 18, with an exception for dependent children who are 19 and over at the time of their arrival in Canada. In those situations, the undertaking should last for three years.

RECOMMENDATION 28

Undertakings for dependent children should last until the child is 19 years of age. For dependent children who are 19 and over at the time of their arrival in Canada, the undertaking should last for three years.

B. FINANCIAL MATTERS RELATING TO SPONSORSHIPS

1. Social Assistance

Committee witnesses raised two financial preconditions to family sponsorships in the proposed regulations that caused them concern. The first was that the receipt of social assistance, for any reason other than disability, is a complete bar to sponsoring any family member. The reason for this is clear: fairness to Canadian taxpayers.

Witnesses pointed out to the Committee, however, that in at least some cases, Canadian taxpayers could be helped by such sponsorships.The immigration of a spouse, common-law partner, or even the parents of a single parent on social assistance, could be the means to a better life if the immigrant was likely to find work or could provide childcare. For that reason, the Committee finds that the receipt of social assistance as an absolute bar to sponsorship could be counterproductive and needs rethinking. We therefore recommend that in appropriate cases family members be allowed to come forward. We recognize that this can be accomplished using humanitarian and compassionate grounds, but would prefer to see it spelled out in the Regulations.

We emphasize that evidence that the arrival of the family member would assist the family unit to become self-sufficient should be cogent and tangible. For example, a spouse or common-law partner might produce evidence of a job offer. A parent might commit in writing to provide childcare services, or parents could provide evidence of assets sufficient to allow the reunited family unit to live independently.

The sponsorship of dependent children by single parents receiving social assistance raises a different issue. Clearly, the arrival of a dependent child will not allow the sponsor to achieve self-sufficiency. We believe, however, that the principle of family reunification in these cases is more important than monetary considerations. We conclude, therefore, that single parents should be able to sponsor dependent children even if receiving social assistance.

RECOMMENDATION 29

Sponsorship of a member of the family class by a sponsor on social assistance should be permitted where there is cogent and tangible evidence that the arrival of the family member is highly likely to enable the household to be self-supporting.

RECOMMENDATION 30

Receipt of social assistance should not bar single parents from sponsoring dependent children.

2. Minimum Income

The second financial precondition to sponsorship that concerned witnesses was a change to the minimum income required to sponsor a person other than a spouse, common-law partner, or a dependent child. The current regulations require an annual income equal to Statistics Canada's low income cut-off figure (LICO) for an area the size of the sponsor's place of residence. The proposed regulations would use the figure for urban areas of 500,000 people or more, regardless of where the sponsor lives. The difference is significant. For example, the LICO for a family of four in a rural area is $22,639; the LICO for that same family of four in an urban area of over 500,000 people is $32,759. There is little doubt that the change will impact the ability of some individuals to sponsor parents.

The Committee accepts the reasoning of one of its witnesses that the proposed increase in the minimum income necessary to sponsor is likely to have a greater impact on women than men because of the fact that, generally speaking, women earn less than men. Moreover, even though the rule does not apply to spouses, common-law partners and dependent children, parents are an important part of the family class. For these reasons, we are reluctant to impose additional sponsorship burdens and recommend that the current rule be continued.

RECOMMENDATION 31

The minimum income required to sponsor members of the family class other than spouses, common-law partners and dependent children should remain at the low income cut-off figure relevant to where the sponsor lives.

C. SPONSORSHIP OF FIANCÉ(E)S AND INTENDED COMMON-LAW PARTNERS

Currently, fiancé(e)s may be sponsored as part of the family class, with the condition that they marry within 90 days. If a visa officer rejects a fiancé(e), the sponsor may appeal to the Appeal Division of the Immigration and Refugee Board.

The Regulations propose to eliminate the relationship of fiancé(e) from the family class and process these applications under the humanitarian and compassionate provisions. This would be the approach for intended common-law partners as well. Appeal rights would thus be lost; the only recourse for refused applicants would be an application for leave for judicial review in the Federal Court. The provision in section 38 of the *Immigration and Refugee Protection Act* that exempts members of the family class from inadmissibility on the grounds that they might reasonably be expected to cause excessive demand on health or social services would also not apply.

The Committee sees no basis for this change. Fiancé(e)s have been members of the family class for years, and we are aware of no reason why they should be deprived of the rights enjoyed by other members of the family class. We recommend that the existing rules be retained, and applied to intended common-law partners.

RECOMMENDATION 32

Fiancé(e)s and intended common-law partners should be members of the family class.

D. DEFINITION OF "COMMON-LAW PARTNER"

For the first time, the Regulations will contain a definition of "common-law partner": "an individual who is cohabiting with [a] person in a conjugal relationship, having so cohabited for a period of at least one year." This definition is followed by a provision stating that if a conjugal relationship has lasted for at least one year, but cohabitation was impossible because of persecution or any form of penal control, the individual may still be considered a common-law partner.

Committee witnesses had a number of criticisms of the above definition. These are:

- "Persecution" and "penal control" as reasons for not fulfilling the cohabitation requirement are far too narrow;
- The one-year cohabitation requirement could be interpreted too literally;
- The cohabitation requirement should be dropped, or used as one factor among many to establish the bona fides of the relationship;
- Same-sex couples formally united under the laws of other jurisdictions should be recognized by our law as well; and
- There is no explicit reference to the fact that a common-law partner may be of the same or the opposite sex.

The Committee is sensitive to the above concerns, particularly the factor relating to "persecution" and "penal control" as reasons for non-cohabitation. Reference to the existence of persecution, or potential persecution, should a same-sex couple cohabit in another country means, in essence, that Canada would consider them refugees. This is an unnecessarily stringent test. For a couple to establish an environment of significant discrimination, which could take place in the workplace, the family, or in social relations, as a reason for not cohabiting should be sufficient, provided the immigration officer is satisfied that the relationship is genuine. Similarly, the threat of actual punishment for cohabiting is far too stringent.

RECOMMENDATION 33

The allowable reasons for excusing common-law partners from cohabiting should be expanded beyond "persecution" and "penal control." Proof of discrimination should be sufficient.

Even with that change there will still be significant difficulties with the one-year cohabitation rule. Some witnesses were concerned that it would be interpreted literally, resulting in a failure to recognize the nature of modern life. All couples are separated from time to time by business, family or other commitments; couples wishing to reunite in Canada may be separated by immigration rules alone. One witness stated that the majority of same-sex partners are unable to cohabit.

The Committee agrees with those witnesses who said that, in an immigration context, the primary test for a common-law partnership should be whether or not the conjugal relationship is bona fide and has continued for at least a year. A mandatory cohabitation requirement is bound to produce unfair results in some circumstances and we have concluded that cohabitation should be only one element among others that serve to prove the genuineness of the relationship.

RECOMMENDATION 34

Officers assessing applications from common-law partners should take a flexible approach when assessing the length of time the individuals have cohabited. Cohabitation should be only one factor in determining the genuineness of a common-law relationship and the definition of "common-law partner" in clause 1 should be changed accordingly.

One further point about the definition of "common-law partner" is noteworthy. The definition does not explicitly state that a partnership can be of the opposite sex or the same sex, although that is clearly the intention. We agree with the witnesses who argued that the definition should reflect the true meaning of the term.

RECOMMENDATION 35

The definition of "common-law partner" in clause 1 should state that a partnership may be of the opposite sex or of the same sex.

E. SPONSOR HABITUALLY PRESENT IN CANADA

Currently, individuals may sponsor family members even if the sponsor is out of the country, provided the sponsor intends to return to Canada at the time the family members receive a visa. Clause 130(1)(*b*) seems to reverse that rule by requiring

sponsors to be habitually present in Canada. One witness raised this issue and noted that it would be unfair to sponsors outside the country who intend to return to Canada.

RECOMMENDATION 36

Canadian citizens and permanent residents abroad should be permitted to sponsor relatives if they intend to return to Canada to reside

F. DEFINITION OF "DEPENDENT CHILD"

Clause 2 of the proposed regulations contains a definition of "dependent child" that includes a reference to a "biological child," to distinguish those children from adopted children. The current regulations use the word "issue" for that purpose.

One witness was opposed to the change, maintaining that "issue" could be more broadly interpreted than "biological child" so as to include a de facto child of the family. The witness pointed to a case now being litigated that is likely to settle this question. The Committee sees no reason to change the terminology from "issue" to "biological child." "Biological child" may suggest to officers assessing applications that a more stringent level of proof is now demanded; it may lead to routine requests for DNA testing, which is both expensive and time-consuming.

The Committee is sympathetic to the situation of children who are, in fact, part of a family, even if they are not the actual children of either of the parents. Departmental officials have the tools at hand to permit a de facto member of the family to immigrate with the family. The *Immigration Manual* discusses de facto family members as a category to be considered for landing on humanitarian and compassionate grounds. If the dependency is bona fide, stable and long lasting a positive decision should be warranted. The Committee urges the Department to continue this approach to humanitarian and compassionate landings.

RECOMMENDATION 37

The term "issue" instead of "biological child" should be used in the definition of "dependent child" in clause 1 of the Regulations.

RECOMMENDATION 38

The current practice of allowing de facto family members to be landed with the rest of the family on humanitarian and compassionate grounds should continue.

G. DEFINITION OF "FAMILY MEMBERS"

Two witnesses raised issues relating to definitions of family in the Regulations. Clause 1 defines the term "family member" to mean a spouse or common-law partner and dependent children. In contrast, the "family class" includes the foregoing, as well as parents, grandparents and others. The implication is that individuals coming to Canada as immigrants are permitted to bring with them their "family members," that is, the nuclear family. Other family may be sponsored later.

One witness questioned this in the case of refugees. The Regulations will now provide a legal basis for the current administrative practice of allowing the family of protected persons selected abroad to have their non-accompanying family members processed as part of their application for one year, without the need for a sponsorship. However, as noted, family means nuclear family, and it was pointed out that parents, for example, might be dependent on the relative in Canada. The Committee recommends that the government consider extending concurrent processing of a selected refugee's family to include those in a dependent relationship.

RECOMMENDATION 39

Consideration should be given to extending concurrent processing of the family of a refugee selected abroad to those members of the family class in a dependent relationship with the refugee.

H. FAMILY BUSINESS JOB OFFER

The Family Business Job Offer Program is an administrative program that allows family businesses to bring a family member to Canada to work in the business in a position of trust. The job offer is currently treated as if it had been validated by Human Resources Development Canada and is awarded 10 points.

The government proposes to eliminate the Program on the grounds that it is resource intensive and that the adaptability criterion of the proposed selection system awards points both for an offer of employment, without the requirement of trust, and a family relationship in Canada. Several witnesses opposed ending this Program. One noted that it was a valuable way to promote family reunification while supporting small business.

The Committee agrees with those witnesses who recommend retaining the Program. Although it may be resource intensive, the numbers landed are small, and the needs filled in the business are likely to be significant. A small family business is unlikely to be able to attract any employee as dedicated and hardworking as a family member, particularly one new to the country who wants to make good.

We also note that earlier we recommended the elimination of points for an informal job offer under the adaptability factor in the selection criteria. If the Department agrees with the Committee that that factor is open to fraud, then one of the reasons for eliminating the Family Business Job Offer Program disappears as well. In addition to continuing the Program, we also recommend that it be put on a firmer footing by including it in the Regulations.

RECOMMENDATION 40

The Family Business Job Offer Program should be continued and should be included in the Regulations.

PART 3: ISSUES RELATING TO REFUGEES

A. PERMANENT RESIDENT STATUS FOR REFUGEES AND PROTECTED PERSONS AND THE UNDOCUMENTED PROTECTED PERSONS IN CANADA CLASS ("LEGAL LIMBO")

Those who are granted status by the Immigration and Refugee Board (IRB), either as a Convention refugee or, under the Board's soon-to-be-expanded mandate, as a "person in need of protection," can apply for permanent residence in Canada. A problem that has consistently arisen in the past is that obtaining permanent resident status is often delayed, as the rules require applicants to establish their identity for a second time. Many applicants do not have documents that are considered satisfactory by CIC and, thus, some refugees remain in a "legal limbo" for years. Although they have been found by the IRB to have established their identity and a fear of persecution, CIC does not land them because they lack satisfactory identity documents.

The Committee heard from many witnesses that those caught in this legal limbo face a multitude of problems. They are unable to sponsor family members to join them in Canada, they cannot access student loans, employers may be hesitant to hire them because of their lack of permanent status, and they cannot travel abroad. There currently exists a special program for landing Somalis and Afghanis and the proposed regulations contemplate continuing such a program — to be referred to as the Undocumented Protected Persons in Canada Class. Many of the witnesses criticized the current and proposed undocumented landing programs as overly restrictive and unnecessary. The Committee found these submissions persuasive.

Security screening now commences when a refugee claimant initiates a claim and both refugee status and permanent resident status may be revoked should any misrepresentations be discovered. As a result, the Committee does not see any compelling reason not to rely on the IRB's finding of identity. As witnesses repeated throughout our hearings, every protection determination is a determination of identity. To hold up the landing of thousands of individuals out of a concern that some — likely a very small number — are not who the IRB concluded they are, is unjust.

The Regulations require specific documents, such as passports and national identity cards, to be submitted with an application for landing. Clause 171 of the proposed regulations provides for the use of a statutory declaration, accompanied by identity documents issued outside Canada before the person's entry to Canada, as an alternative to these requirements. Some witnesses testified that this provision requires more than the recent arrangement reached in Federal Court (the Aden Order). In any event, the Committee feels that the IRB's determination of identity should be considered dependable and that further obstacles to landing, such as those anticipated by this clause, need not exist.

The Committee recommends that those granted refugee or protected person status by the IRB be granted permanent resident status within 60 days and that the IRB's determination of identity be considered valid for this purpose. The Undocumented Protected Persons in Canada Class would thus become unnecessary and should be eliminated.

RECOMMENDATION 41

Those granted refugee or protected person status by the IRB should be granted permanent resident status within 60 days of the receipt of their application for permanent residence, with the IRB's determination of identity considered valid for this purpose.

RECOMMENDATION 42

The Undocumented Protected Persons in Canada Class should be eliminated.

B. REFUGEE RESETTLEMENT FROM OVERSEAS

1. Overview

Refugees and others in refugee-like situations abroad may apply for resettlement in Canada. Currently, refugees can be sponsored for resettlement either by groups or organizations, or by the government. Apart from satisfying the criteria for Convention refugee status, applicants must show an ability to establish themselves in Canada. Two humanitarian classes also exist: the Country of Asylum and the Source Country classes. The former includes people outside of their home country who are personally affected by massive violations of civil rights or an armed conflict, such as a civil war. The latter includes people who are from a country listed on the Source Country Schedule and who would qualify as Convention refugees if they were outside of their home country.

The proposed regulations would maintain the resettlement program in its current form with a few significant alterations. To begin with, refugees who are seeking resettlement but do not have private sponsors in Canada would have to be referred by the United Nations High Commissioner for Refugees (UNHCR) or another organization that has a memorandum of understanding with the Minister. (In fact, many refugees are now referred in this manner as a matter of administrative practice.) Exceptions are contemplated when referral organizations are unavailable or unable to provide referrals, or when circumstances in the region justify accepting applications without a referral. The requirement of a referral is intended to assist in managing the volume of applications, while the designation of geographic areas where referrals are not necessary permits the Minister some discretion in situations of humanitarian urgency.

In determining the likelihood of economic establishment in Canada for those seeking resettlement, the criteria would remain essentially the same, except that consideration of the applicants' ability to communicate in an official language would be changed to a consideration of their ability to learn an official language. As well, the presence of family in Canada would be a new factor to be considered. Those who are determined to be "vulnerable" (i.e. in greater need of protection than other refugees due to a heightened risk to their physical safety) or "in urgent need of protection" (i.e. facing an immediate threat of being killed, subjected to violence or arbitrary imprisonment, or returned to their home country) would no longer need to demonstrate an ability to become economically established in Canada.

The Committee heard testimony that raised concerns with respect to three aspects of the overseas refugee program.

2. Ability To Establish

The requirement that foreign nationals in need of refugee protection satisfy an immigration officer that they and their accompanying family members will be able to become "economically established" in Canada was criticized by various witnesses.

While most who addressed this issue advocated removing any establishment requirement, some suggested that, at a minimum, the requirement to establish "economically" should be removed. The Committee believes that such an amendment would be reasonable.

RECOMMENDATION 43

The requirement of clause 136(1)(g) that a refugee overseas demonstrate an ability to become "economically established" should be changed to an ability to become "established."

The factors that are to be considered when assessing the ability of applicants to establish are set out in clause 136(1)(g) and include: their "resourcefulness"; the presence of relatives in Canada; the potential for employment given their education and skills; and, their ability to learn to communicate in an official language. While many witnesses indicated that they would prefer that the ability to establish criterion be eliminated, it was also suggested that, at a minimum, the individual factors should not be given inordinate weight. For example, the lack of relatives in Canada should not in itself be considered detrimental to an application for resettlement.

RECOMMENDATION 44

Clause 136(1)(g) should be clarified to indicate that the factors indicating potential for establishment should be examined collectively so that a weakness in one area would not bar admission.

3. Referral Requirement

The requirement of a referral from the UNHCR or an organization that has a memorandum of understanding (MOU) with the Department gave rise to concerns on the part of some witnesses. Clause 140(2) of the proposed regulations stipulates some of the requirements of any MOU with a referral agency. The Committee was urged to consider including procedural requirements that would ensure fairness in the referral process. Among these were:

- A stipulation that before issuing a decision not to refer, the organization must give the applicant notice of the intention not to refer and an opportunity to respond.
- A stipulation that before issuing a decision not to refer, the organization should interview the applicant.
- A stipulation that the organization must provide a copy of the file to the Federal Court of Canada when an applicant challenges a decision not to issue a visa on the basis of a lack of a referral.
- A stipulation that the organization reconsider a decision not to refer, when requested to do so by the Minister.

The Committee wishes to ensure that applicants for resettlement in Canada are treated fairly and encourages the Department to include procedural safeguards in MOUs.

RECOMMENDATION 45

The Department should develop additional requirements regarding the contents of memoranda of understanding with referral agencies that will ensure procedural fairness in the referral process.

4. No Durable Solution

Clause 136(1)(d) of the proposed regulations requires that refugees seeking resettlement establish that there is no reasonable prospect, within a reasonable period of time, of a “durable solution” in a country other than Canada. Two witnesses indicated their reading of durable solution as including voluntary repatriation, resettlement in a country other than Canada, or resettlement in the country of nationality or habitual residence. These witnesses suggested that the Regulations as written appear to contemplate resettlement in the country of feared persecution when the individual is not willing to return. It would seem implausible that someone who qualifies under the Regulations as a Convention refugee would be required to return to their home country against their will.

If it is intended that involuntary resettlement in the country of nationality or habitual residence is included in the definition of “durable solution,” the Committee shares the

concerns of witnesses who indicated that this would violate international standards respecting *refoulement*, or return to a country of feared persecution.

RECOMMENDATION 46

The definition of "durable solution" should be clarified and should not include involuntary resettlement in the country of nationality or habitual residence.

C. PRE-REMOVAL RISK ASSESSMENT (PRRA)

The Regulations would clarify some aspects of the PRRA process by specifying, for example, when an application can be made and how long an applicant would have to submit their evidence after receiving notice from the Department. Oral hearings may be convened in some situations and the Regulations also provide some guidance in this respect. Other substantive and procedural PRRA rules are, however, absent from the proposed regulations.

With respect to the 15-day deadline for submitting an application following the receipt of a notice from CIC, some witnesses indicated that this is simply too short a time. Thirty days has, in the past, been accepted by the Department as a reasonable time for written submissions and, as some witnesses indicated, 30 days is the time limit for filing an application for leave to apply for judicial review in the Federal Court.

RECOMMENDATION 47

The filing deadline for Pre-Removal Risk Assessment submissions should be 30 days.

Generally, it is anticipated that the PRRA process will involve only a paper review. However, oral hearings may be convened in some cases. The proposed regulations provide, in clause 159, that when credibility is in issue with respect to evidence that is central to a protection decision, and acceptance of the evidence would justify granting protected status, an oral hearing may be convened.

The Committee notes that the PRRA process is, in part, intended to address the fact that under the Act, a person can make only one refugee claim in a lifetime. Pursuant to section 101(1) of the Act, those whose claims have been rejected, withdrawn or abandoned (among others) will be ineligible to have another claim heard by the IRB, regardless of any change in circumstances or the passage of time. The PRRA would therefore be used in the case of a person who, for example, is rejected by the IRB in 2003 but who, after returning to their homeland, faces new persecution in 2005 and subsequently appears at a Canadian port of entry seeking asylum. Similarly, the PRRA would be used by a person who withdraws their IRB claim in 2003, falsely believing it safe

to return to their home country, only to return to Canada the following year due to a well-founded fear of persecution.

RECOMMENDATION 48

The Regulations should provide that an oral Pre-Removal Risk Assessment hearing is required when an applicant is ineligible to have a protection claim heard by the Immigration and Refugee Board because a previous claim was withdrawn or abandoned.

The Regulations are vague concerning the procedures to be followed in the course of a PRRA hearing. Notice would be given to a PRRA applicant of the issues of fact to be addressed at the hearing and the person would be required to respond to questions posed by an immigration officer. However, no details are provided as to other procedural rules, such as those that exist for IRB hearings. As these hearings may be a matter of life or death for some applicants, the Committee agrees with the witnesses who advocated more details in the Regulations.

RECOMMENDATION 49

The Regulations should set out additional rules by which the Pre-Removal Risk Assessment may ensure protection against *refoulement*.

PART 4: ISSUES RELATING TO INADMISSIBILITY

A. HEALTH — "EXCESSIVE DEMAND"

Section 38 of the new Act provides that a person is inadmissible to Canada on health grounds if they "might reasonably be expected to cause excessive demand on health or social services." Clause 32 of the proposed regulations defines "excessive demand" (in part) as demand that would likely exceed average Canadian per capita health or social services costs over a period of five consecutive years, unless there is evidence that significant costs are likely to be incurred beyond that point, in which case the period may be up to 10 years.

The Committee agrees with witnesses who pointed out that using average per capita health costs would be unfair to sponsored parents and grandparents, whose health care will, in the normal course of events, likely exceed that figure. We note as well that health care costs vary by sex.

A recent report by the Conference Board of Canada contains per capita public health care expenditures by age and sex. It is noteworthy that individuals 55 and over of both sexes exceed the *average* per capita cost of Canadian public health care. Also of interest is the fact that men and women have similar public expenditures only at the ages of 55 to 64. For every other age cohort, expenditures differ by sex; sometimes men's expenditures are higher and sometimes women's. For these reasons, we have concluded that the correct reference point for the definition of "excessive demand" should be to age- and sex-related costs. We note as well that the definition as proposed refers to average costs, without specifying *public* costs. Because the purpose of the excessive demand requirement is to protect public health care plans, this is an important omission.

RECOMMENDATION 50

The definition of "excessive demand" should refer to age- and sex-related average Canadian per capita public health or social service costs.

In other testimony, the view was advanced that a potential window of 10 years is too long, and that excessive demand should be based on short time frames. The Committee agrees that 10 years is too long a time period. The pace of medical advances these days is so extraordinary that it makes little sense to try to predict the future of medicine beyond five years. Every day, it seems, brings an announcement of the discovery of the cause of a certain disease, a new drug, or a new treatment. The disease or disability that today may be seen as likely to cause an excessive demand on our health or social services may in the future be either curable or controllable in ways that can only

be dreamt of now. We conclude that the framework for the calculation of excessive demand should not exceed five years.

RECOMMENDATION 51

The time period for the calculation of excessive demand on health or social services should not exceed five years.

B. HEALTH — PUBLIC HEALTH

Section 38 of the Act also provides that a person is inadmissible to Canada on health grounds if their health condition is likely to be a danger to public health. Clause 29 of the Regulations provides that an officer evaluating this provision should consider "the communicability of any disease" that a person may have. One witness testified that this wording should be clarified to distinguish between diseases that are casually transmitted and those that are not. As well, the availability of measures to reduce the risk of passing on the disease must also be taken into account.

The Committee agrees that the wording of the provision should be clearer. We assume that the drafting was intended to reflect the degrees of communicability of a disease and recommend that clause 29 be redrafted accordingly.

RECOMMENDATION 52

Clause 29 should be redrafted to clarify that when an officer is assessing whether an applicant's health condition is likely to be a danger to public health the *degree* of communicability of any disease the applicant has should be taken into account.

C. SECTION 64 OF THE ACT

Section 64 of the new Act removes the right of permanent residents convicted of a "serious criminal offence" — defined as any offence for which a sentence of at least two years was imposed — to appeal their deportation order to the Immigration Appeal Division. Thus, if an immigration officer reports a permanent resident to an adjudicator as inadmissible on this basis, the permanent resident automatically faces deportation regardless of any extenuating factors.

Currently, the Appeal Division is permitted to hear such appeals, except when the Minister submits an opinion that the person is a danger to the public. Circumstances that will be considered at these hearings have been enumerated in a case called *Ribic v. Canada (MEI)* and include:

- The seriousness of the offence;

- The possibility of rehabilitation;
- The length of time spent in Canada and the degree to which the person is established here;
- Any family in Canada and the dislocation to the family that deportation would cause;
- The support available to the person, not only within the family but within the community; and,
- The degree of hardship that would be caused to the person by return to the country of nationality.

Section 44 of the Act is permissive in that an officer who is of the opinion that someone is inadmissible *may* prepare a report to send to the Minister, which report *may* be referred to an admissibility hearing. Section 53 grants the Governor in Council the authority to make regulations governing the exercise of these, and other, discretionary powers. The Department has indicated that discretion does exist when determining whether to write a report and whether to refer a report to a hearing. Nothing in the proposed regulations, however, addresses this discretion.

In testimony before the Committee in the course of its hearings on Bill C-11, witnesses indicated quite clearly that their preference would be to remove section 64 from the Act, thereby allowing an appeal. As an alternative, some have now suggested including the *Ribic* criteria in the Regulations that would govern whether or not a permanent resident convicted of a serious offence is referred to an admissibility hearing. Regulations mirroring the *Ribic* criteria could address the concern that long-term permanent residents with strong ties to Canada and who are low risks to re-offend would face deportation based solely on the fact of their conviction and sentence.

When this issue was raised again in the course of the Committee's study of the Regulations, reference was made to a previous statement by the Department that there is a thorough review of individual circumstances when considering enforcement action against a long-term permanent resident. The Committee believes that the factors that are considered should appear in the Regulations. In fact, the union representing immigration workers testified that front-line employees would find such guidance extremely helpful.

RECOMMENDATION 53

The considerations set out in the *Ribic* case should be included in the Regulations as the criteria to be used when determining whether a permanent resident sentenced to more than two years should be referred to an admissibility hearing.

PART 5: APPLICATIONS

A. PLACE OF APPLICATION FOR VISA

Clause 9(1) provides that an application for permanent residence or for a temporary resident visa must be made at the immigration office outside Canada that serves the applicant's place of habitual residence. Exceptions are made in clause 17 for specific permanent resident applications: live-in caregivers, members of the spouse or common-law partner in Canada class, and members of the undocumented protected persons in Canada class. For the most part, however, applicants will be restricted to a specific immigration office outside the country. Witnesses appearing before the Committee expressed various concerns with respect to this new regulatory requirement.

The Committee realizes that, in many situations, clause 9 will cause inconvenience and could result in prospective permanent residents, temporary workers and students abandoning plans to come to, or remain in Canada. A visitor in Canada who, for example, decides to attend university here or receives a job offer that is validated by Human Resources Development Canada as a position no Canadian can fill, may be discouraged if they are required to return to China or South Africa to apply for a study or work permit.

There are also situations where an applicant is located in an area outside Canada that is not their place of habitual residence and it would cause hardship to require them to apply at the mission serving their home country. For example, a Chilean professor who is on a short sabbatical at the University of Vermont and receives a job offer at Queen's University would likely want to apply for a visa in Buffalo, New York and not in Santiago. Reference was also made in testimony to the fact that some people are reluctant to make applications at visa posts in their home country. It was suggested that there are issues with respect to the confidentiality of applications and the use of locally engaged staff at some overseas missions.

Apart from greater flexibility abroad, witnesses also made reference to the need for an expansion of the groups permitted to make in-Canada applications. Visitors seeking status as students or temporary workers were mentioned, as were those in Canada on a work permit wishing to apply for permanent resident status.

The Committee found many of the witnesses' suggestions to be compelling and we make the following recommendations.

RECOMMENDATION 54

Applicants should be permitted to apply for a visa at any Canadian immigration mission abroad.

RECOMMENDATION 55

Foreign nationals who are legally in Canada should be permitted to apply to a CIC office within Canada for a study permit.

RECOMMENDATION 56

People in Canada on a work permit should be permitted to apply for permanent residence at a CIC office within Canada.

The Committee also had drawn to its attention the issue of people working in Canada without legal status to do so. This is particularly common in the construction industry, which has come to rely on such labour. As was noted in the Committee's report on border security of December 2001, the Department should consider relaxing the landing requirements for those who can demonstrate ties to our country, a clean record and a likelihood that they will be self-sufficient. These people do not currently pay taxes and are often exploited by employers. Not only would this address these undesirable consequences of a lack of status, it would also reduce the demands on the enforcement branch of CIC and would benefit Canadian industry.

RECOMMENDATION 57

As recommended in our December 2001 report on border security, there should be relaxed landing requirements for applications made on humanitarian and compassionate grounds for people illegally in Canada who can demonstrate that they pose no risk to the country and are self-sufficient. CIC should create a proposal for implementing this recommendation for review by the Committee.

B. RESTORATION OF TEMPORARY STATUS

It happens from time to time that temporary residents unwittingly allow their status to lapse. The proposed regulations require that an application to restore status be made within 30 days of the expiration of status. The Committee heard from witnesses who suggested that there is no justification for this time limit. We agree that 30 days is too short a period to rectify an inadvertent lapse.

RECOMMENDATION 58

The Regulations should permit applications to restore status to be made within 90 days of the expiration of the individual's status.

C. RESIDENCY REQUIREMENTS

Section 28 of the Act requires that permanent residents be in Canada for two years (730 days) out of every five years to maintain permanent resident status. Exceptions are made for people working outside of the country for a Canadian business and for specific accompanying family members. The Act allows other exceptions to be prescribed by the Regulations, but the proposed regulations are silent on this matter. In its Regulatory Impact Analysis Statement, the Department indicates that consideration was given to allowing study abroad as another means of compliance with the residency obligation, but it was determined that a sufficiently generous amount of time for absences from Canada is already provided. However, the Committee notes that permanent residents studying abroad for a five-year period would lose permanent resident status even if they returned to Canada for the months of May through August every year. The Committee also heard from witnesses who made reference to other absences from Canada that should be excusable.

It is understood that section 28(2)(c) of the Act would permit the consideration of humanitarian and compassionate factors to overcome a breach of the residency requirement. However, the Committee has determined that it would be appropriate to include specific situations in the Regulations for greater certainty.

RECOMMENDATION 59

The Regulations should provide that permanent residents comply with the residency obligation of section 28 of the Act if they are outside of Canada for the purpose of studies at a post-secondary institution, to care for a close relative who is sick, or if they are prevented from returning to Canada due to circumstances beyond their control, such as armed conflict or forced military conscription.

D. PERMANENT RESIDENT CARD

Section 31 of the Act provides that a status document shall be provided to permanent residents, and that the Regulations may state the circumstances in which the document may be issued, renewed or revoked. This document has come to be called the "Maple Leaf" card, and in most cases will be valid for five years.

Cards will be provided to all new permanent residents. Those who are already permanent residents who wish to travel (or, eventually, new permanent residents after

five years when the cards expire) must apply for the card. The application procedure resembles that for a passport. A guarantor is required, who must be from a specified list of professions and who has known the applicant for two years. Information is requested regarding absences from Canada within the last five years, in order to satisfy the residence criteria for permanent resident status.

As a number of witnesses pointed out, however, much of the information required goes far beyond that found on a passport application. For example, applicants are asked: where they have lived for the last five years; all the employers they have worked for in that same period, or the educational institutions attended; the names, addresses and telephone numbers of two Canadian citizens or permanent residents who know the applicant; and for identity documents, including (as one option) the applicant's most recent income tax notice of assessment.

The Committee agrees that the information proposed to be collected for the purpose of the permanent resident card far exceeds what is necessary to establish that the person is still a permanent resident. Identity and residency would seem to be the key factors, and a good deal of the information proposed to be collected is thus not relevant. We recommend that the government redraft these provisions to concentrate only on the information directly relevant to the establishment or maintenance of permanent residence.

RECOMMENDATION 60

The information required to apply for a permanent resident card should be targeted only to issues of identity and residency.

As originally conceived, the permanent resident card was to contain security features, such as high quality paper, and a photograph of the individual to whom it was issued. Biographical data relevant to immigration status would be embedded in a magnetic strip. The card was heralded as a document that would be secure, in contrast to the current record of landing document (the IMM1000). The Department has been aware for a number of years that the IMM1000 is open to forgery, being a paper document that does not even bear a photograph of the holder.

Several of the Committee's witnesses raised the question of whether there might be biometric identifiers on the new permanent resident card. They were strongly opposed, on the grounds that the use of biometric data implies that permanent residents are less trustworthy than citizens.

Some critics of the new card, however, maintain that, without biometric data, it will be no more secure than the IMM1000 that it will replace. In this section of the report, the Committee will explore issues relating to the security of the card as originally conceived and the possible use of biometric identifiers.

We start with the use of photo identification, proposed as a security feature for the new card. This first thing to note is that human beings are not particularly acute at recognizing individuals from photograph identification, particularly across cultural lines. Moreover, glasses, hairstyles and (for men) facial hair may change, which may lead to questions even when the holder of the card is genuine

More important, however, is the ease with which photo identification may be faked. A cursory search of the world wide Web turns up numerous Web sites offering assistance in manufacturing fake photo identification cards for virtually any purpose. There is even a Web site that evaluates the fake products of the various sites.

Some sites purport to be for "novelty" purposes; others do not bother with that pretence. Here is the promise on one: "Become ANYONE You Want! Surprise your friends and FOOL...ANYONE...ANYTIME...ANYWHERE. Repair your credit. Travel in style. Protect your loved ones. No one will know the TRUTH but Yourself. Disappear completely and Start a New Life!"

Even if those companies do not have the sophisticated tools to reproduce a high-quality card, others do. Thus, the Committee feels that Canadians are right to have concerns about the security of the new card. It would be a shame for the government to spend close to $20 million and not achieve its intended purpose.

Are biometric identifiers the answer? "Biometrics" is the technology that takes physical or behavioural characteristics of individuals and converts then into digital data. They are then encrypted into a system, which can be an individual card, from which subsequent comparisons are made.

There are a number of possible biometric identifiers. Some — fingerprints and features of the eye (the retina and the iris) — are considered unique to an individual. Others, such as facial features, hand geometry, and voiceprints are considered relatively unique to an individual. Both types contain information that is considered non-transferrable among individuals. Neither type contains data *about* the person; rather, a biometric identifier is information *of* the person.

Biometric identifiers are used for the purpose of *authentication* (or verification) of identify, or for *identification* of a person, or both. In the case of the permanent resident card, the identifier encrypted on an individual's card would be compared against the biometric information presented in person. If the two matched, the person's identity would be authenticated. Because the biometric identifier would be encrypted on the card, forgery would be extremely difficult.

Some commentators are wary of the widespread use of biometric information, particularly in the private sector. They warn that biometric systems are not foolproof, and

that there are dangers in data sharing. They view some uses, such as surveillance of crowds on the basis of facial features, as threatening individual autonomy.

Critics feel that the widespread use of biometrics raises issues relating to privacy and human individuality, and may engender in people a sense that the government and private organizations are becoming all intrusive. They warn too of what has been called "function creep," the application of technology to uses unintended and possibly unforeseen when first introduced.

Although the Committee is sympathetic to the above concerns about the use of biometric identifiers, we believe that with the appropriate safeguards, and for the limited purposes envisaged, a biometric identifier is essential to provide sufficient security for the new permanent resident card.

What safeguards would be appropriate? We recommend the following:

- Although no biometric system is foolproof, the system should be made as accurate as possible to ensure a high degree of confidence in the results.
- All available measures should be taken to prevent the possibility of tampering with the system.
- A unique identifier — fingerprints or retinal scans — would be preferable to a less reliable one.
- The biometric identifier on the card should be limited to authentication for immigration purposes only.
- Because the identifier on the card authenticates the identity of the person who enrolled in the system, it is essential that the initial enrolment process be as valid as possible. Biometrics cannot detect an assumed identity.

RECOMMENDATION 61

To enhance the security of the new permanent resident card, the government should introduce a biometric identifier once it is satisfied that the appropriate safeguards are in place.

PART 6: REGULATION OF IMMIGRATION CONSULTANTS

Section 91 of the Act permits regulations to be made regarding who may or may not represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer, or the Immigration and Refugee Board. It may be assumed that any regulations contemplated under this provision would be for the purpose of governing immigration consultants. The proposed regulations, however, do not mention consultants, nor does the Regulatory Impact Analysis Statement. For many witnesses, these were disappointing omissions. The new Minister specifically requested that the Committee consider this matter.

For a number of years, the public, the Department, and Parliament have been aware of the numerous problems created by unscrupulous immigration consultants. We hasten to add that there are many bona fide consultants, a number of whom appeared before us as witnesses. In 1995, this Committee studied the matter and reported that it was time that the exploitation of vulnerable people by unscrupulous consultants must end, and made practical recommendations as to how that could be accomplished. Over six years later, with little concrete progress having been made, the title of the report seems ironic: *Immigration Consultants: It's Time to Act*.

Some steps were taken. Groups representing consultants have collaborated to develop a regulatory model for a college of immigration practitioners in accordance with the Department's requirements, but the project seems to have stalled. The Committee urges the Department to treat this as a matter of concern and proceed with implementation of a regulatory system as soon as possible.

RECOMMENDATION 62

Citizenship and Immigration Canada should treat the licensing of immigration consultants as a matter of priority. To that end, it should proceed with the groups representing consultants on the development and implementation of the College of Immigration Practitioners and implement this Committee's 1995 Report.

PART 7: IMMIGRATION AND REFUGEE BOARD RULES

Although most of the Committee's witnesses addressed the Regulations proposed by Citizenship and Immigration Canada, one witness brought to our attention the issue of intervenor status in the proposed rules of the Immigration and Refugee Board.

The rules relating to the Refugee Appeal Division provide that under certain circumstances intervenors may seek status at a proceeding before the Division. With some exceptions, they are entitled to the same participation and notice rights as the other participants. The witness argued that three of those exceptions should be removed.

The result of removing the exceptions would be that:

- Intervenors would receive notice of any specialized knowledge or information the Division was planning to use;
- Intervenors could give notice that they wished to argue a constitutional question; and,
- Intervenors would have the ability to argue, in an application to reopen an appeal that had already been decided, whether or not the Division had failed to observe a principle of natural justice.

It was also recommended that there should be a role for intervenors in the other divisions as well.

RECOMMENDATION 63

Immigration and Refugee Board rules should provide as much latitude as possible for intervenors before the Refugee Appeal Division so that their expertise can be fully utilized.

RECOMMENDATION 64

The Immigration and Refugee Board should consider whether it would be appropriate for the rules to provide for intervenor participation before all divisions of the Board.

PART 8: OTHER MATTERS

A. HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS

Section 25 of the *Immigration and Refugee Protection Act* is an important tool for alleviating hardship. It permits the Minister to grant permanent resident status to a person who is inadmissible, or who does not meet the requirements of the Act, if it is justified by humanitarian and compassionate considerations. The regulations expand on this power.

A number of witnesses found the proposed regulations on humanitarian and compassionate considerations confusing. They referred to an apparent contradiction with the Act, and a lack of clarity regarding the purpose of each of the clauses. Rather than being an aid to understanding, the marginal notes add to the confusion. Some witnesses were led to believe that, although the Act permits inadmissibility to be overcome in deserving cases, the Regulations require that a person *not* be inadmissible.

In fact, a close reading of the proposed regulations reveals that it is only when the Minister is considering granting permanent resident status to a person who is not a member of an immigration class, and therefore does not meet the requirements of the Act, that the person will have to demonstrate that they are not inadmissible for medical, security or other reasons. Although the Committee accepts that the provisions may be legally acceptable, we feel nevertheless that they should be re-drafted to make them clearer. Provisions that cause so much confusion should not be allowed to go forward without revision.

RECOMMENDATION 65

Clauses 108, 110 and 112 dealing with humanitarian and compassionate considerations should be redrafted to clarify their intent.

Another group urged that certain criteria relevant to humanitarian and compassionate treatment should be included in the Regulations. They suggested protection in violent situations, the protection or rehabilitation of the victims of trafficking, and achieving family reunification as factors that would merit humanitarian and compassionate consideration.

Given their importance, the Committee agrees that it is reasonable to include the above factors in the regulations. We stress that any such list would be illustrative only and would not in any way preclude an officer from considering other factors, or for other factors to be included in guidelines.

RECOMMENDATION 66

A non-exhaustive list of important factors that could be relevant to a humanitarian and compassionate decision should be included in the regulations.

B. MINOR CHILDREN AND SCHOOLING

Section 30(2) of the Act provides that any minor child in Canada may study at the pre-school, primary or secondary level, unless they are the child of a *temporary resident not authorized to work or study.* We interpret the emphasized words as referring to legitimate visitors or tourists. In its Regulatory Impact Analysis Statement, the Department explains that the purpose of the provision is to facilitate access to education in Canada by all minor children by reducing administrative procedures.

The Committee recognizes that there could be a problem with the implementation of this section if some parents without immigration status in Canada fear being discovered when their children first enrol in school. To avoid children being kept from school for that reason, CIC should inform school authorities of the limited purpose of the provision in the Act, which is to provide education for *all* minor children with the exception of the children of legitimate tourists and visitors.

RECOMMENDATION 67

To avoid a chilling effect on children's access to education, the regulations should include provisions to clarify for school authorities the intent of the Act regarding the education of minor children.

RECOMMENDATION 68

Citizenship and Immigration Canada should develop clear procedures for school authorities to follow so that all minor children who are eligible may be enrolled in school. These should be communicated to school authorities.

C. THE ENTREPRENEUR AND INVESTOR PROGRAMS

For the most part, the entrepreneur and investor categories remain unchanged in the proposed regulations. However, a standard of what constitutes "business experience" would be established. An applicant must have either owned and managed a "qualifying business" within two of the last five years, or managed at least 50 employees in a business within two of the last five years. Clause 76 provides a technical definition of what would constitute a "qualifying business" based upon factors such as annual sales, net income, or net assets. As well, a net worth of $300,000 would now be required for entrepreneurs.

Witnesses appearing before the Committee suggested that the new standards for these programs are set too high and will result in desirable business class applicants choosing countries other than Canada. Currently, prospective entrepreneurs are required to show that they intend and have the ability to establish or purchase a business in Canada for which they will provide active management. Evidence of an ability to manage is required, but there are no hard and fast rules as to the size of the company the entrepreneur previously managed or the number of employees previously supervised. There is currently no net worth requirement for entrepreneurs. Investors, similarly, must currently demonstrate that they have business experience, but no minimum requirements exist in the regulations.

The Department's impact analysis indicates that the changes were made to ensure a consistent application of what has become an inherently subjective determination of experience. Reference is made to "excessive challenges" to selection decisions in the Federal Court and it is suggested that the proposed regulations will result in greater transparency. The Committee, however, believes that the new requirements could have a detrimental effect on the international competitiveness of the programs.

RECOMMENDATION 69

The entrepreneur and investor programs should remain unchanged and each application should be judged on its own merits without reference to a set standard.

D. THE SELF-EMPLOYED

The proposed regulations would slightly expand the self-employed category to include not only those who would contribute to Canada's cultural and artistic life, but also those who would make a significant contribution to athletics at the world-class level and those who would purchase and manage a farm in Canada. However, the Committee believes that this class is still too restrictive. Others who are capable of creating employment for themselves should be considered for inclusion.

RECOMMENDATION 70

The self-employed category should be broadened to include others who are capable of creating their own employment in Canada.

E. DETENTION OF CHILDREN

The detention of children is always of concern. Section 60 of the Act affirms as a principle that detention of a minor child should occur only as a last resort, and must take into account the best interests of the child. Clause 256 of the regulations specifically

addresses the special considerations that apply to the detention of children under 18 years of age. These considerations are: the availability of arrangements with local agencies; the anticipated length of detention; the possibility of continued control by smugglers; and the type of detention facility where they would be held.

The Committee heard the view that the regulations do not appear to incorporate the “last resort” principle. Witnesses suggested that the impression is given that if the detention facilities are adequate, minors can be detained. They were also opposed to detention on the ground of identity alone, and to the suggestion that if children were brought by smugglers, that is a good reason to detain them. It was proposed that “safe houses” should be used instead.

The Committee is concerned that the regulations unintentionally give the impression that detaining minors is justified provided any of the general factors listed for adults, and the special factors for children in clause 256, have been considered or are applicable. This is unfortunate, as it undermines the principle of last resort in the Act. We see no reason why the principle cannot be restated in clause 256 as a constant reminder to officers.

RECOMMENDATION 71

Clause 256 of the regulations relating specifically to the detention of minor children should restate the principle that a minor child shall be detained only as a last resort.

RECOMMENDATION 72

The regulations should be reviewed to ensure that they more accurately reflect that principle.

F. MINISTERIAL DEPORTATIONS

The *Citizenship Act* provides that a person may lose their citizenship if it was obtained by fraud, false representation or knowingly concealing material circumstances. (The process by which the facts are determined occurs in Federal Court.) The *Immigration and Refugee Protection Act* provides that if loss of citizenship occurs for that reason, the person does not regain their status of permanent resident (section (46(2)). They therefore become foreign nationals.

The new Act provides that the regulations may specify the circumstances under which the Minister may make a deportation order for foreign nationals without referring the matter to the Immigration Division for an admissibility hearing (section 44(2)).

One of those circumstances, prescribed in proposed clause 234, is if the foreign national is inadmissible on the grounds of misrepresentation in connection with a refugee claim under section 40(1)(*c*) of the Act. That is the only ground of misrepresentation in the proposed regulations.

Section 40(1)(*d*) of the Act states that individuals are inadmissible for misrepresentation if they cease to be a citizen on the basis that their citizenship was obtained by fraud, false representation or knowingly concealing material circumstances. One of the Committee's witnesses proposed that that section should be added to clause 234 of the proposed regulations.

Adding a reference to section 40(1)(*d*) of the Act to clause 234 of the proposed regulations would mean that an inadmissibility report resulting from the loss of citizenship that had been fraudulently obtained, a purely factual matter, would not need to be referred to the Immigration Division for a hearing, and a deportation order could be issued immediately. This would save time, by eliminating an unnecessary step. The person concerned would still be able to make an application for leave to apply for judicial review of the order in Federal Court. The Committee agrees that this is a reasonable suggestion.

RECOMMENDATION 73

A reference to section 40(1)(*d*) of the Act should be added to clause 234 of the proposed regulations so that an inadmissibility report resulting from the loss of citizenship that had been fraudulently obtained would not need to be referred to the Immigration Division for a hearing, and a deportation order could be issued immediately.

G. DRAFTING OF THE REGULATIONS

The Committee is aware that these regulations were readied for publication on an urgent basis following the events of September 11, 2001 and, as a result, they are not as clearly written as we would have hoped. Many members of the Committee, as well as witnesses who appeared before us, indicated that the proposed regulations could be written in simpler language and would be more easily understood if formatted and referenced differently. In addition, several of our witnesses mentioned that the French and English do not always correspond, and that in some cases the French version could only be understood by referring to the English version.

RECOMMENDATION 74

Before the regulations come into force, they should be reviewed for clarity of language and for concordance between the English and French texts.

PART 9: TRANCHE 2 OF THE REGULATIONS

The second package of regulations for the new Act was prepublished in the *Canada Gazette* on March 9, 2002. It contains proposed regulations on seizure, transportation companies, loans, and fees, as well as transitional regulations relating to enforcement, the refugee and humanitarian resettlement program, refugee protection, court proceedings, dependents, family class, undertakings and fees. This Tranche provides for a 30-day consultation period, i.e. until April 8, 2002.

Since it was only made available after the Committee had completed almost all of its hearings, we have not been able to undertake any more than a brief review. One issue that did cause some concern was clause 273, which relates to the return of seized items to a lawful owner. It is difficult to tell from the Regulations when an innocent third party whose car is used to violate the Act will have to pay $5,000 for the return of their vehicle. Department officials indicated that clause 273(1) regarding the return of a "thing" without charge will apply to vehicles and that this will be clarified in the manuals, but properly drafted regulations should be clear on their face.

RECOMMENDATION 75

The Regulations should be amended to clearly indicate that a vehicle's lawful owner who did not participate in the fraudulent use of the vehicle, and who had no reasonable grounds to believe that it would be so used, will have their vehicle returned without any fee or payment.

The rules for providing notice to transportation companies who may have to pay repatriation costs or arrange for repatriation themselves are also set out in detail in Tranche 2. This had been a concern of one organization who also indicated that it would be eager to see how the Regulations address the definition of "transportation companies," the definition of "security" to be provided, and the potential liability for the medical costs incurred by passengers. Whether transportation companies will have significant concerns about Tranche 2 is unknown. The transitional provisions relating to refugees may also evoke a reaction from some parties. The Committee regrets that it has not been able to hear from these groups regarding this set of regulations. Their input would be valuable to the Department and should be actively sought.

RECOMMENDATION 76

Further consultation should be undertaken by the Department with interested parties in respect of Tranche 2 of the Regulations.

PART 10: IMPLEMENTATION DATE

The *Immigration and Refugee Protection Act* received Royal Assent on November 1, 2001. The government has announced, and confirmed on February 26, 2002, that it is planning to bring the Act and the Regulations into force on June 28, 2002. Although some of the Committee's witnesses suggested that the implementation date be postponed in order to ensure a smoother launch, the Committee is confident that the necessary work is well underway in order to support implementation at the end of June.

If the new Act were minor legislation, with few immediate effects, then the Committee might feel differently. But the *Immigration and Refugee Protection Act* is the first complete overhaul of Canada's immigration laws since the mid-1970s. It will affect — and improve — virtually all aspects of our immigration and refugee program. Not the least of these are the national security and public safety provisions that, in the wake of September 11, assume even more significance.

These security measures include stronger powers of detention, broader grounds for denying people access to Canada for reasons related to organized crime, tightened rules regarding access to the refugee determination system and an increased ability to use sensitive information to bar or remove people from the country if they pose a threat. It is essential that these measures be in place as soon as is reasonably possible.

Families will benefit from the new law. The revised definition of "dependent child" will mean more children will be eligible to be sponsored. Common-law partners will be formally recognized for the first time. The excessive demand aspect of medical inadmissibility will cease to apply to spouses, common-law partners and dependent children.

Refugees seeking resettlement from abroad will also benefit. Selection criteria will be broadened and family members will be able to be reunited faster. Refugees and their dependents will also be exempted from the excessive demand aspect of medical inadmissibility.

Genuine refugees seeking protection from within Canada should find the process faster and fairer, and there will be new mechanisms to deal with those who may be using the system for other purposes.

For all of the above reasons the Committee supports the decision to implement the new Act and Regulations on June 28, 2002.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1

All skilled worker applications received before December 31, 2001 should be processed under the existing selection criteria until March 31, 2003.

RECOMMENDATION 2

Citizenship and Immigration Canada must make a corporate commitment to process its skilled worker inventory on a priority basis.

RECOMMENDATION 3

Staff at each post with a significant skilled worker inventory should reassess their general policies regarding personal interviews — when are they essential and when can they be waived.

RECOMMENDATION 4

Special teams ("SWAT" teams) should be used to clear backlogs at missions with large inventories to ensure that they are processed expeditiously and that applicants are not disadvantaged by their place of application.

RECOMMENDATION 5

In the interests of fairness and equity, the government should increase the resources dedicated to processing the applications of skilled workers in order to minimize the impact of the revised selection criteria on the skilled worker inventory.

RECOMMENDATION 6

The requirement that an applicant complete a specified total number of years of study when assessing educational credentials should be eliminated.

RECOMMENDATION 7

Fifteen points should be awarded for diplomas, trade certificates and apprenticeships that require one or two years of full-time studies, and

an additional five points should be awarded to applicants in this group who have a high school diploma.

RECOMMENDATION 8

An applicant with two or more undergraduate degrees should be awarded 25 points under the education criterion.

RECOMMENDATION 9

"Full-time" in relation to studies or training should be defined as at least 12 hours of instruction per week, and should include co-op programs.

RECOMMENDATION 10

Four levels of language ability should be included in the point grid: high proficiency, moderate proficiency, basic proficiency and no ability.

RECOMMENDATION 11

Twelve points should be awarded for moderate proficiency and four points should be awarded for basic proficiency in the applicant's first official language.

RECOMMENDATION 12

The points awarded for high proficiency in the applicant's second official language should be increased to eight, the points awarded for moderate proficiency should be increased to six and four points should be awarded for a basic proficiency in the second official language. The maximum total points available for language skills should remain at 20 with additional points being available under the adaptability criterion when an applicant has a high proficiency in both official languages.

RECOMMENDATION 13

Ten points should be awarded for applicants between 21 and 50 years of age, with a decrease of 2 points for each year younger or older.

RECOMMENDATION 14

Adaptability points should not be awarded for an informal job offer in Canada.

RECOMMENDATION 15

The maximum points available for adaptability should be increased from 10 to 15.

RECOMMENDATION 16

Five points should be awarded under adaptability for those who do not have arranged employment in Canada but who would otherwise meet the requirements of special sectoral agreements, such as the pilot project for software professionals.

RECOMMENDATION 17

Seven points should be awarded under adaptability for those who can satisfy an immigration officer that they intend to settle in a region of low immigration. This should be monitored for effectiveness on an ongoing basis.

RECOMMENDATION 18

Five points should be awarded under adaptability for those who have the support of a local community organization and can provide a settlement plan.

RECOMMENDATION 19

Five points should be awarded under adaptability for those who have previously visited Canada, provided they have not received points for previous study or work in Canada.

RECOMMENDATION 20

Four points should be awarded under adaptability for those who demonstrate a high proficiency in their second official language.

RECOMMENDATION 21

Following the adjustment of the selection system criteria as the Committee has recommended, the pass mark should be set at 70 points.

RECOMMENDATION 22

After two years, the Department should analyze the impact of the changes to the grid and the pass mark and report its findings to Parliament.

RECOMMENDATION 23

Clause 64(1)(*b*) should be amended to provide that the minimum settlement funds required for skilled worker applicants and their family members should be sufficient to support them for a period of six months after they enter Canada, not one year, using the LICO figures.

RECOMMENDATION 24

Clause 65 regarding the continuing applicability of the selection criteria should be redrafted to state that the selection system and pass mark in effect at the time of an application must be used at all processing points, and to clarify which of the criteria must continue to be met at the time the visa is issued.

RECOMMENDATION 25

All applications for permanent residence in Canada should clearly indicate that to work in one's profession or trade, accreditation or certification from a licensing body may be required and that applicants should contact the appropriate agencies to determine their likelihood of obtaining such accreditation or certification.

RECOMMENDATION 26

The federal government should provide assistance to the regulatory bodies that govern admission to skilled trades and professions in Canada to determine foreign equivalencies and to facilitate the entry of skilled worker immigrants into the labour market.

RECOMMENDATION 27

The recognition of foreign credentials should be given priority when the federal and provincial governments meet to discuss immigration issues. Partnerships between the federal and provincial governments and licensing bodies should be pursued.

RECOMMENDATION 28

Undertakings for dependent children should last until the child is 19 years of age. For dependent children who are 19 and over at the time of their arrival in Canada, the undertaking should last for three years.

RECOMMENDATION 29

Sponsorship of a member of the family class by a sponsor on social assistance should be permitted where there is cogent and tangible evidence that the arrival of the family member is highly likely to enable the household to be self-supporting.

RECOMMENDATION 30

Receipt of social assistance should not bar single parents from sponsoring dependent children.

RECOMMENDATION 31

The minimum income required to sponsor members of the family class other than spouses, common-law partners and dependent children should remain at the low income cut-off figure relevant to where the sponsor lives.

RECOMMENDATION 32

Fiancé(e)s and intended common-law partners should be members of the family class.

RECOMMENDATION 33

The allowable reasons for excusing common-law partners from cohabiting should be expanded beyond "persecution" and "penal control." Proof of discrimination should be sufficient.

RECOMMENDATION 34

Officers assessing applications from common-law partners should take a flexible approach when assessing the length of time the individuals have cohabited. Cohabitation should be only one factor in determining the genuineness of a common-law relationship and the definition of "common-law partner" in clause 1 should be changed accordingly.

RECOMMENDATION 35

The definition of "common-law partner" in clause 1 should state that a partnership may be of the opposite sex or of the same sex.

RECOMMENDATION 36

Canadian citizens and permanent residents abroad should be permitted to sponsor relatives if they intend to return to Canada to reside

RECOMMENDATION 37

The term "issue" instead of "biological child" should be used in the definition of "dependent child" in clause 1 of the Regulations.

RECOMMENDATION 38

The current practice of allowing de facto family members to be landed with the rest of the family on humanitarian and compassionate grounds should continue.

RECOMMENDATION 39

Consideration should be given to extending concurrent processing of the family of a refugee selected abroad to those members of the family class in a dependent relationship with the refugee.

RECOMMENDATION 40

The Family Business Job Offer Program should be continued and should be included in the Regulations.

RECOMMENDATION 41

Those granted refugee or protected person status by the IRB should be granted permanent resident status within 60 days of the receipt of their application for permanent residence, with the IRB's determination of identity considered valid for this purpose.

RECOMMENDATION 42

The Undocumented Protected Persons in Canada Class should be eliminated.

RECOMMENDATION 43

The requirement of clause 136(1)(g) that a refugee overseas demonstrate an ability to become "economically established" should be changed to an ability to become "established."

RECOMMENDATION 44

Clause 136(1)(g) should be clarified to indicate that the factors indicating potential for establishment should be examined collectively so that a weakness in one area would not bar admission.

RECOMMENDATION 45

The Department should develop additional requirements regarding the contents of memoranda of understanding with referral agencies that will ensure procedural fairness in the referral process.

RECOMMENDATION 46

The definition of "durable solution" should be clarified and should not include involuntary resettlement in the country of nationality or habitual residence.

RECOMMENDATION 47

The filing deadline for Pre-Removal Risk Assessment submissions should be 30 days.

RECOMMENDATION 48

The Regulations should provide that an oral Pre-Removal Risk Assessment hearing is required when an applicant is ineligible to have a protection claim heard by the Immigration and Refugee Board because a previous claim was withdrawn or abandoned.

RECOMMENDATION 49

The Regulations should set out additional rules by which the Pre-Removal Risk Assessment may ensure protection against *refoulement*.

RECOMMENDATION 50

The definition of "excessive demand" should refer to age- and sex-related average Canadian per capita public health or social service costs.

RECOMMENDATION 51

The time period for the calculation of excessive demand on health or social services should not exceed five years.

RECOMMENDATION 52

Clause 29 should be redrafted to clarify that when an officer is assessing whether an applicant's health condition is likely to be a danger to public health the *degree* of communicability of any disease the applicant has should be taken into account.

RECOMMENDATION 53

The considerations set out in the *Ribic* case should be included in the Regulations as the criteria to be used when determining whether a permanent resident sentenced to more than two years should be referred to an admissibility hearing.

RECOMMENDATION 54

Applicants should be permitted to apply for a visa at any Canadian immigration mission abroad.

RECOMMENDATION 55

Foreign nationals who are legally in Canada should be permitted to apply to a CIC office within Canada for a study permit.

RECOMMENDATION 56

People in Canada on a work permit should be permitted to apply for permanent residence at a CIC office within Canada.

RECOMMENDATION 57

As recommended in our December 2001 report on border security, there should be relaxed landing requirements for applications made on humanitarian and compassionate grounds for people illegally in Canada who can demonstrate that they pose no risk to the country and

are self-sufficient. CIC should create a proposal for implementing this recommendation for review by the Committee.

RECOMMENDATION 58

The Regulations should permit applications to restore status to be made within 90 days of the expiration of the individual's status.

RECOMMENDATION 59

The Regulations should provide that permanent residents comply with the residency obligation of section 28 of the Act if they are outside of Canada for the purpose of studies at a post-secondary institution, to care for a close relative who is sick, or if they are prevented from returning to Canada due to circumstances beyond their control, such as armed conflict or forced military conscription.

RECOMMENDATION 60

The information required to apply for a permanent resident card should be targeted only to issues of identity and residency.

RECOMMENDATION 61

To enhance the security of the new permanent resident card, the government should introduce a biometric identifier once it is satisfied that the appropriate safeguards are in place.

RECOMMENDATION 62

Citizenship and Immigration Canada should treat the licensing of immigration consultants as a matter of priority. To that end, it should proceed with the groups representing consultants on the development and implementation of the College of Immigration Practitioners and implement this Committee's 1995 Report.

RECOMMENDATION 63

Immigration and Refugee Board rules should provide as much latitude as possible for intervenors before the Refugee Appeal Division so that their expertise can be fully utilized.

RECOMMENDATION 64

The Immigration and Refugee Board should consider whether it would be appropriate for the rules to provide for intervenor participation before all divisions of the Board.

RECOMMENDATION 65

Clauses 108, 110 and 112 dealing with humanitarian and compassionate considerations should be redrafted to clarify their intent.

RECOMMENDATION 66

A non-exhaustive list of important factors that could be relevant to a humanitarian and compassionate decision should be included in the Regulations.

RECOMMENDATION 67

To avoid a chilling effect on children's access to education, the Regulations should include provisions to clarify for school authorities the intent of the Act regarding the education of minor children.

RECOMMENDATION 68

Citizenship and Immigration Canada should develop clear procedures for school authorities to follow so that all minor children who are eligible may be enrolled in school. These should be communicated to school authorities.

RECOMMENDATION 69

The entrepreneur and investor programs should remain unchanged and each application should be judged on its own merits without reference to a set standard.

RECOMMENDATION 70

The self-employed category should be broadened to include others who are capable of creating their own employment in Canada.

RECOMMENDATION 71

Clause 256 of the Regulations relating specifically to the detention of minor children should restate the principle that a minor child shall be detained only as a last resort.

RECOMMENDATION 72

The Regulations should be reviewed to ensure that they more accurately reflect that principle.

RECOMMENDATION 73

A reference to section 40(1)(*d*) of the Act should be added to clause 234 of the proposed regulations so that an inadmissibility report resulting from the loss of citizenship that had been fraudulently obtained would not need to be referred to the Immigration Division for a hearing, and a deportation order could be issued immediately.

RECOMMENDATION 74

Before the Regulations come into force, they should be reviewed for clarity of language and for concordance between the English and French texts.

RECOMMENDATION 75

The Regulations should be amended to clearly indicate that a vehicle's lawful owner who did not participate in the fraudulent use of the vehicle, and who had no reasonable grounds to believe that it would be so used, will have their vehicle returned without any fee or payment.

RECOMMENDATION 76

Further consultation should be undertaken by the Department with interested parties in respect of Tranche 2 of the Regulations.

APPENDIX A
LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Department of Citizenship and Immigration	29/01/2002	41
Hon. Denis Coderre, Minister		
Joan Atkinson, Assistant Deputy Minister, Policy and Program Development		
Mark Davidson, Director, Economic Policy and Programs, Selection		
Nicole Girard, Acting Director, Legislative Review		
Daniel Therrien, Director General, Refugees		
Immigration and Refugee Board	29/01/2002	42
Manon Brassard, Director General		
Krista Daley, Senior General Counsel		
Peter Showler, Chairperson		
“Association québécoise des avocats et avocates en droit de l'immigration”	31/01/2002	43
Patrice Brunet, Lawyer		
David Chalk, Lawyer		
“Barreau du Québec”		
Julie Delaney, Lawyer		
Noël St-Pierre, Lawyer		
B'nai Brith Canada		
David Matas, Lead Counsel		

Associations and Individuals	Date	Meeting
Canadian Bar Association	31/01/2002	43
Gordon Maynard, Treasurer		
Benjamin Trister, Chair		
Canadian Council for Refugees		
Janet Dench, Executive Director		
Kemi Jacobs, President		
Maytree Foundation		
Elizabeth McIsaac, Manager		
Ratna Omidvar, Executive Director		
Association of Immigration Counsels of Canada	04/02/2002	44
Joseph Kenney, First National Vice-President		
John Ryan, National President		
Canada Employment and Immigration Union		
Janina Lebon, National Vice-President		
Cres Pascucci, National President		
Coalition for a Just Immigration & Refugee Policy		
Avvy Go, Clinic Director		
National Action Committee on the Status of Women		
Sungee John, Chair of the Immigration Committee and Acting Treasurer		
National Association of Women and the Law		
Andrée Côté, Director		
Chantale Tie, Lawyer		

Associations and Individuals	Date	Meeting
United Nations High Commissioner for Refugees	04/02/2002	44
Judith Kumin, Representative in Canada		
Kim Mancini, Regional Legal Officer		
Association of Universities and Colleges of Canada	05/02/2002	45
Karen McBride, Vice-President, International Affairs		
Canadian HIV-AIDS Legal Network		
Alana Klein, Research Associate		
Canadians for Fair and Just Immigration Policy		
Robin Seligman		
EGALE (Equality for Gays and Lesbians Everywhere)		
Michael Battista, Lawyer		
John Fisher, Executive Director		
LEGIT Vancouver		
Deb LeRose, Member		
Chris Morrissey, Co-founder		
Organization of Professional Immigration Consultants Inc.		
Warren Lloyd, Vice-President		
Jill Sparling, President		
“Table de concertation de Montréal au service des réfugiés”		
Rivka Augenfeld, President		
Richard Goldman, Member of the Executive		

Associations and Individuals	Date	Meeting
West Coast Domestic Workers' Association	05/02/2002	45
Tami Friesen, Lawyer		
As Individual		
Mendel Green		
Canadian Immigration Policy Council	07/02/2002	46
Howard Greenberg, Founding Member		
Coalition of Regulatory Agencies		
Marie Lemay, Chief Executive Officer		
Susan Glover Takahashi, Executive Director		
L. Cormode & Associates Research Services		
Liisa Cormode, President		
African Canadian Legal Clinic	19/02/2002	47
Erica Lawson, Policy and Research Analyst		
Canadian Home Builders' Association		
John Kenward, Chief Operating Officer		
Mary Lawson, Secretary		
Getting Landed Project		
Harry Kits, Executive Director		
Inter Clinic Immigration Working Group		
Michael Bossin, Barrister and Solicitor		
Caroline Lindberg, Lawyer		
National Indo-Canadian Council		
David Davis, Lawyer		

Associations and Individuals	Date	Meeting
Parkdale Community Legal Services Inc.	19/02/2002	47
Geraldine Sadoway, Staff Lawyer		
Canadian Chamber of Commerce (The)	21/02/2002	48
Nancy Hughes Anthony, President and Chief Executive Officer		
Benjamin Trister, Chair		
Canadian Manufacturers and Exporters		
Margot Booth, Director		
Mark Boudreau, Senior Director, Policy and Research		
International Association of Immigration Practitioners		
Ramesh Dheer, National President		
As Individuals		
Hon. Anne C. Cools, Senator		
Roger Gallaway, M.P., Sarnia—Lambton		
Chinese Canadian National Council	26/02/2002	49
Jonas Ma, President		
Rupert Yeung, Member		
Jewish Federation of Winnipeg		
Faye Rosenberg-Cohen, Planning Director		
Leslie Wilder, Vice-President		
National Organization of Immigrant and Visible Minority Women of Canada		
Anu Bose, Executive Director		
Karine Pelletier, Member		

Associations and Individuals	Date	Meeting
Shipping Federation of Canada (The)	26/02/2002	49
Anne Legars, Director		
Ukrainian Canadian Congress		
Eugene Czolij, President		
Eugen Duvalko, Executive Director		
Canadian Labour Congress	28/02/2002	50
David Onyalo, National Director		
Hassan Yussuff, Executive Vice-President		
Coalition of Concerned Congregations on the Law Relating to War Crimes and Crimes Against Humanity Including those of the Holocaust		
Kenneth Narvey, Legal Researcher and Chief Operating Officer		
Office of the Commissioner of Official Languages		
Dyane Adam, Commissioner		
Gérard Finn, Director General, Policy and Communications		
Jack Jedwab, Executive Director of the Canadian Studies Association		
Department of Citizenship and Immigration	12/03/2002	52
Joan Atkinson, Assistant Deputy Minister, Policy and Program Development		
David Dunbar, Senior Counsel, Legal Services		
Nicole Girard, Acting Director, Legislative Review		
Daniel Therrien, Director General, Refugees		

Associations and Individuals	Date	Meeting
Department of Citizenship and Immigration	12/03/2002	53
Frank Andrews, Deputy Director, Economic Policy and Programs		
Dick Graham, Director, Legislative Review, Enforcement		
Brian Gushulak, Director General, Medical Services Branch		
Paul Sandhar-Cruz, Deputy Director, Social Policy and Programs		

APPENDIX B
LIST OF BRIEFS

African Canadian Legal Clinic

Association of Immigration Counsels of Canada

Association of Universities and Colleges of Canada

“Association québécoise des avocats et avocates en droit de l'immigration”

“Barreau du Québec”

B'nai Brith Canada

Canada Employment and Immigration Union

Canadian Association for Community Living

Canadian Association of Management Consultants

Canadian Bar Association

Canadian Chamber of Commerce (The)

Canadian Council for Refugees

Canadian HIV-AIDS Legal Network

Canadian Home Builders' Association

Canadian Immigration Policy Council

Canadian Manufacturers and Exporters

Canadians for Fair and Just Immigration Policy

Chinese Canadian National Council

Chinese Professionals Association of Canada

City of Toronto Working Group on Immigration and Refugee Issues

Coalition for a Just Immigration & Refugee Policy

Coalition of Concerned Congregations on the Law relating to War Crimes and Crimes against Humanity including those of the Holocaust

Coalition of Regulatory Agencies

College of Immigration Practitioners of Canada

EGALE (Equality for Gays and Lesbians Everywhere)

Getting Landed Project

Greater Toronto Home Builders' Association

Mendel Green

Inter Clinic Immigration Working Group
International Association of Immigration Practitioners
Matthew Jeffery
Jewish Federation of Winnipeg
Korean Society of B.C. for Fraternity and Culture
L. Cormode & Associates Research Services
Law Union of Ontario
George Lee
LEGIT Vancouver
Maytree Foundation
National Action Committee on the Status of Women
National Association of Women and the Law
National Congress of Chinese Canadians (Ontario Chapter)
National Indo-Canadian Council
National Organization of Immigrant and Visible Minority Women of Canada
Office of the Commissioner of Official Languages
Organization of Professional Immigration Consultants Inc.
Ottawa-Carleton Council on Aids
Parkdale Community Legal Services Inc.
Philippine Women Centre
Shipping Federation of Canada (The)
Ukrainian Canadian Congress
United Nations High Commissioner for Refugees
West Coast Domestic Workers' Association
West Coast L.E.A.F. Association

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, your Committee requests the Government to table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Citizenship and Immigration (*Issues Nos 41 to 59 which includes this report*) is tabled.

Respectfully submitted,

Joe Fontana, M.P.
Chairman

OFFICIAL OPPOSITION COMMENTARY

The Canadian Alliance members positively engaged the process of regulatory review with the government members. We support the new enhanced involvement of a Standing Committee to review regulations. We support the report as far as it goes to clarify the operations of the pending Bill C-11. We recognize that internal problems with the department will continue despite some improvement to the overall system.

We reflect on behalf of Canadians, that even with the proclamation of Bill C-11, and the implementation of the attached regulations, Canada will have an overly complex and expensive system. The fundamentals are not hard to understand, wherein Canada needs clear procedures to receive appropriate immigrant applications, while ensuring public safety. Moreover the worldwide fact that millions of people are on the move, and the failure of Canada to effectively respond to the abuse of the 'refugee class,' remains problematic.

Beyond mere criticism, the Canadian Alliance has a positive vision. Canada is a nation of immigrants, and has always been enriched by new arrivals to our shores. A Canadian Alliance government will facilitate the current levels of immigration, and make improvements to the security, fairness, and integrity of the system. The system must meet the high expectations of average Canadians and enhance the welfare of new arrivals. We will ensure Canadian sovereignty on the borders.

We appreciate that Canada is a society built by successive waves of immigration from all sectors of the globe. We will create a positive immigration policy that is merit based. Administration will primarily take into account Canada's economic needs. We will introduce greater security and reliability into the system, including enforcement of sponsorship obligations. We will work more co-operatively with the Provinces on national-policy and settlement costs. We affirm the independence of 'immigration administration' from federal 'multiculturalism'.

Non-citizens of Canada who are convicted of an indictable crime, or who are known to engage in serious criminal activity, will be deported. By more careful screening for the criminal element, we will protect the integrity and security of immigrants and enhance community crime prevention. Canada should no longer be called a safe-haven for "international operatives".

We affirm Canada's international humanitarian obligation to receive its share of genuine refugees. Refugee status will be determined expeditiously under the rule of law and beyond political interference. To ensure fairness, we will quickly deport failed refugee claimants and illegal entrants, and will prosecute those who organize and profit from abuse of the system. We will re-allocate resources to reduce the thousands within Canada who are without legal status or who are on the deportation list.

We will review the extra “Ministerial Permit” category, by seeking to provide transparency and public accountability within the context of the Privacy Act.

Concerning the regulations, to operationalize Bill C-11, it must be emphasised Canada is in a ‘process’ rather than in ‘finality.’ It is predicted that the new legislation and regulations will have to be amended within a short time once the realities of application are revealed.

During the Standing Committee work of hearing testimony and recommending changes, the Canadian Alliance members sought incremental improvements whenever the government members were amenable. However, it remains that the system as a whole will continue to be an administrative quagmire and consume an unreasonable amount of money.

The long-term problem with the system is an ideological and philosophical one. There needs to be more political courage to act, striving for higher standards of public safety within a context of administrative simplicity and cost effectiveness.

SUPPLEMENTARY OPINION OF THE BLOC QUÉBÉCOIS

As suggested by the Bloc, clause 5(2) of An Act Respecting Immigration to Canada and the Granting of Refugee Protection to Persons who are Displaced, Persecuted, or in Danger (C-11), which stipulated that the regulations, published on December 10, 2001, be referred to committee, demonstrated the sagacity of the law maker. If it were not for this clause, the entry into force of the regulations would have proven the fears of many interveners who, in their commentary on bill C-11, indicated that this legislation would markedly tighten access to Canada for immigrants and refugees.

The Bloc Québécois would like to emphasize the degree to which the testimony of committee witnesses during the last few weeks has been invaluable to the Members of the Committee. It permitted us to determine whether or not the regulations respect the spirit and the objectives of the bill and will be applied with equality, openness, and compassion.

Although the Bloc predominantly supports the recommendations of the report, it seems useful to emphasize a number of additions that we had hoped for.

1. Retroactivity

This reality touches two groups of applicants: those whose date of application was before December 10, 2001, and those whose date of application falls between this date and that of the entry into force of the new regulations. Even if the parameters given by the Committee for the new selection grid are, in our opinion, fairer, we believe that the new grid should only be used for the second group of applicants, and then after March 31, 2003. After this date, the applicants that do not obtain a passing score with the new grid should be evaluated using the old grid. This would guarantee equality for each applicant and would also serve to validate the new grid.

2. Selection grid

Even if Québec is responsible for the selection of its own immigrants, and therefore, not affected by this new selection grid, we have serious reservations about the 15 points awarded for arranged employment approved by HRDC, since only 2% of applicants are able to obtain one. The score should thus be reduced to 10 points and these points would ideally be included in the adaptability section. Concerning the points linked to an applicant’s partner’s education, does this not constitute discrimination based on the applicant’s civil status?

3. Permanent resident card

The introduction of biometric identification is not one to be taken lightly given its impact, notably, on the privacy rights of the individual. This is a question that needs to be examined with all the seriousness that public debates demand, as it is one where the interests of efficiency brutally confront ethical considerations. A decision on this issue should not discriminate against permanent residents.

4. Detention of minors

We reiterate the position taken in the committee report regarding the detention of minors, keeping in mind that the fact that detention is not a form of protection. A decision to detain should not be taken without a professional evaluation by competent practitioner of child or teenage psychology.

5. Domestic Workers

The report does not mention the domestic workers program. The Bloc Québécois shares the opinion of our witnesses: permanent resident status should be awarded *de facto* to the participants of this program and the requirement to live in the same residence as the employer should be removed. Further, the establishment of an employer-employee contract is insufficient to guarantee working conditions and to ensure that these workers, most of whom are women, see their fundamental rights respected.

In conclusion, permit me to pause at the title of the report: *Building a Nation/Bâtir un pays.* For the Bloc Québécois, immigration plays an important role in the building of our societies. Québec, like Canada, needs these new citizens and our capacity to welcome them is essential to their integration into one or the other of these societies. Further, the Bloc Québécois hopes that the final version of the regulations will be submitted to the Committee before their publication. Finally, how can we not mention the extremely professional and tireless work of our research team, translators, and support personnel. Their competence maintained the focus of the task at hand, and they certainly contributed to the convivial climate that prevailed around the table over the course of the last few weeks. A huge thank-you to all.

Madeleine Dalphond-Guiral
Member of Parliament for Laval-Centre
Citizenship and Immigration critic for the Bloc Québécois

March 20, 2002

NEW DEMOCRATIC PARTY REPORT
JUDY WASYLYCIA-LEIS, MP

The Citizenship and Immigration Committee has made considerable progress toward re-shaping the poor set of proposals we received into a much-improved set of regulations for the government to consider. In so doing, the Committee was assisted greatly by the many witnesses who appeared before it and the many others who contacted us to express their serious concerns about the original regulatory proposals. This public outcry has been instrumental in improving the regulations. Despite a number of significant changes, however, there remain outstanding issues that demand further comment.

Common threads running through witness testimony told us the package was inadequate to meet the goal of opening Canada's doors wider, left many issues unresolved, and appeared not to have anticipated many of its indirect consequences. The compressed deadline of June 28th was repeatedly cited as a contributing factor. The overriding impression was one of disappointment, of an opportunity lost.

Recently released census data shows Canada's growth rate at a meager four per cent. Economists predict this could lead to labour shortages within five years if left unchecked. Our future economic well-being has never more clearly depended on a successful immigration strategy. Yet we have not attained even the limited target of one per cent immigration growth per year pledged by this government. The new Act and its regulations offer no vision of where a population-based immigration policy would take us, let alone a focused strategy on how to get there.

There is no evidence that the proposed point system with its increased emphasis on higher education, language proficiency and degree of experience — even as modified by the Committee — will, in fact, open the door wider. What is clear is that many who have skills to contribute may be denied. Women, who are less likely to have formally recognized skills and education, will be particularly disadvantaged.

Ironically, some of Canada's most successful immigration efforts, like Manitoba's Provincial Nominee Program, place more emphasis on skills and adaptability. These programs are meant to complement, not replace the federal Act — a role they are playing increasingly as they proliferate across the country.

A recent study by the Canadian Council for Social Development paints a disturbing picture in which highly qualified immigrants are experiencing high rates of unemployment and underemployment — especially if they are among racialized minorities. New Democrats called for a gender and anti-racist analysis, when the Act was being debated. We renew our call for these measures to ensure that, at the very least, the Act and regulations do not contribute to discriminatory outcomes.

The CCSD and other studies show that foreign qualifications and work experience are undervalued, leading to severe problems in resettlement — a critical aspect to the success of any immigration program and one that this federal government has virtually ignored. Immigrants and immigration patterns are changing worldwide and our success in attracting future immigrants will depend in large part on our reputation. The government, by not ensuring recognition of credentials and not investing pro-actively in resettlement, is coasting on past glories that will quickly dissipate in the face of immigrants' direct experience of unemployment and discrimination. Bad news travels fast, and in this case places Canada's future economic prosperity at risk. We must also be wary of overemphasizing narrow economic considerations at the expense of the balance with family class immigration — a proven bulwark of our immigration program. Strong family ties still have an important role to play in future immigration.

In addition to measures to improve credential recognition, several other issues of fairness and equity remain outstanding. For example, New Democrats have called for changes to the Live-in Caregiver Program that have not been addressed in the regulations. Domestic caregivers' skills need to be recognized and those entering Canada under the Caregiver Program should be given permanent resident status. The program should eventually be phased out, but, in the interim, participants should enjoy basic employee rights. Singling out permanent residents for privacy intrusions not applicable to other Canadians is another concern. The need for biometric information on "Maple Leaf Cards", for example, has not been adequately demonstrated and this intrusive initiative should be dropped. If, in future, the Minister identifies a need for such information, it should be brought before Parliament and vetted by the Privacy Commissioner.

The proposal to apply the regulations retroactively was met, quite rightly, by a wave of public outrage: the problem of inadequate resourcing and backlogs was not to be solved by unfairly changing the rules mid-stream. Although the Committee has made an effort to tinker with the dates, the unprincipled application of retroactivity still remains. The issue has damaged our reputation and reinforced the impression that Canada is ill-prepared to cope with immigration on the scale it needs. Not a beckoning image.

The failure of the Act to set a clear, welcoming tone is compounded by the government's reluctance to take on a refugee commitment more appropriate to our capacity. We are far from a world leader in accepting refugees and can certainly do more to relieve the intolerable situation facing those forced to flee oppression. Yet, the regulations continue to throw up barriers like "establishment" criteria that are immigration-based and should have no place in refugee selection.

With the demographic changes in Canada over the last quarter century, we have truly begun to create a place that the entire world can call home. Constructing a new Act and regulations gave us a chance to reflect that new reality and our increasing dependence on immigrants in a bold new vision for future immigration. Instead, these

regulations reinforce an Act that speaks more to “tightening up” than to “opening up”. Predominance is given to restrictions, keeping people out and discouraging all but the most committed. Many who could adapt and contribute are being excluded. More work needs to be done.

PC-DR COALITION DISSENTING REPORT

INKY MARK, PC-DR COALIATION
CITIZENSHIP AND IMMIGRATION CRITIC

The PC-DR Coalition agrees in principle with many of the recommendations found in this report. The main disagreement is on the issue of retroactivity, which is supported by both the Liberal and Canadian Alliance Parties. The Standing Committee heard the same concerns expressed at the new regulation hearings as was heard during the C-11 public hearings. The new Bill certainly did not reflect the public sentiment. Much work has gone into drafting this report on the new regulations. The question is, will the government implement these recommendation or will this report become a dust collector like many of the former reports, such as "*Securing our Borders"*, of the Standing Committee on Citizenship and Immigration?

Bill C-11, which was to have been the Liberal government's magic bullet for all the immigration ills of this country is proving to be a dud. Famous quotes such as "keep the front door open while closing the back door" were said obviously without much forethought, for if the government took a reality check, they would find that not only is the front door unscreened, but the back door is off it's hinges. Does the government need to be reminded of both internal and external thefts of visa and IMM 1000 documents along with Ministerial permits? One would think that after September 11, 2001, people from countries like Saudi Arabia would be required to have a visitor visa to enter Canada, even on a temporary basis. The number of new regulations makes C-11, which was supposed to have been framework legislation, look very insignificant. It almost appears that the department has hijacked the Bill in its entirety. This is one weakness of framework legislation. Many of these new regulations should have been written into Bill C-11.

There is a huge disconnect between what Liberals say and what they do. They want to be known as the Party which support immigrants. We know that they want immigrant votes. The new regulations do not reflect the intent of the C-11 legislation. The problem is that Liberals lump everything together. They do not seem able to separate legitimate immigration issues from security issues. The Auditor General has been echoing these concerns over the last decade and they a re still un-addressed by this government. There are real people out there who have been waiting for up to four years to legally enter this country. The reality is that the department drafts regulations to suit it's own administrative purposes. Let us not forget that the role of the politician, unlike the bureaucrat, should be looking at these regulations from a human perspective.

Here are some of the commentary regarding these new regulations to Bill C-11: these regulations are volume control by the department; these regulations are a method for getting rid of the backlog which is an estimated 225,000; these regulations do not reflect Canadian values; these regulations hijack Parliament as many of these regulations should be in legislation; these regulations are the first steps toward a quota

system; C-11 and the regulations demonstrate a system that is fundamentally flawed; the current new regulations illustrate conclusively why Parliament needs to re-examine the merits of the framework legislation of Bill C-11.

There were many concerns expressed by the public during the hearings on the new regulations. The principle concerns were on the issues of retroactivity and the new Skilled Workers' Grid. Space is limited so I can only deal with retroactivity. On behalf of the PC-DR Coalition, I will say again, we are against the principle of retroactivity. The Liberals and the Canadian Alliance support retroactivity. They support an end date. We do not support an end date. We believe that all applicants who have applied before the implementation date of both the Act and the regulations should be processed under the old system. We do not believe the rules should be changed in midstream. This is plain unjust and unfair. This is not the Canadian way. Retroactivity is repugnant and unprecedented in legislation.

To illustrate how important this issue of retroactivity is, I will list the comments expressed before the Standing Committee:

Maytree Foundation — Interim measures to ensure fair process and service to applicants should be implemented and applicants whose applications are rejected because of changes in the regulations receive refunds; **Canadians for Fair and Just Immigration Policy** — Retroactivity should not be applied under any circumstances. Even a refund of the fees is totally unacceptable; **Customs & Immigration Union** — Running parallel systems (old and new) can be done with this kind of volume — "no problem at all"; **AQAADI, UCC and NOIVMWC** — Applications should be assessed using the criteria in place at the time the application was submitted. Failure to respect the "lock-in" date is a betrayal of legitimate expectations; **CBA** — Retroactivity will harm Canada's reputation in the eyes of potential immigrants. The traditional practice of locking in eligibility criteria at the time of application should continue; **Association of Immigration Counsel of Canada** — Retroactivity will seriously undermine Canada's reputation. It is an ill-conceived policy that is unfair, unjust and discriminatory; **Mendel Green** – Serious court challenges will result from retroactivity. Take care of the backlog with additional resources; **Canadian Immigration Policy Council** — We cannot accept the retroactive failure of applicants simply because there are too many in the queue; **Canadian Manufacturers & Exporters** — If we are to be able to compete for skilled workers, Canada cannot create a system that has no foundation on predictability. This will affect temporary workers as well. Why would an individual recruited to Canada on a temporary work permit uproot his/her family if the rules of the system can be changed at any time?

Canada is a land of immigrants. Canada was built by immigrants. Canada will continue to be built by immigration. Our economic future depends on sound immigration policy. Yes, we do need to address security concerns of the post-September 11 era. The world is watching how Canada deals with immigration. The irony of Both Bill C-11 and the new regulations is that they are anti-immigration vehicles. They penalize the legitimate

applicant while letting asylum seekers and undesirables who step on our soil in through the back door. If we are to be a pro-immigration country, we need to match our legislation and regulations with out intent and our vision.

MINUTES OF PROCEEDINGS

Wednesday, March 20, 2002
*(*Meeting No. 59*)*

The Standing Committee on Citizenship and Immigration met *in camera* at 3:38 p.m. this day, in Room 701, La Promenade Building, the Chair, Joe Fontana, presiding.

Members of the Committee present: Mark Assad, Yvon Charbonneau, Madeleine Dalphond-Guiral, Joe Fontana, Paul Forseth, Steve Mahoney, Anita Neville, Jerry Pickard, Judy Wasylycia-Leis.

In attendance: *From the Library of Parliament*: Benjamin Dolin; Margaret Young, Researchers.

Pursuant to its mandate under Standing Order 108(2) — The Committee resumed consideration of a draft Report on Regulations/Immigration and Refugee Protection Act.

The Committee considered its draft report to the House.

On motion of Steve Mahoney, — It was agreed — That the draft Report, as amended, be adopted as the Committee's Third Report to the House and that the Chairman be instructed to present it to the House.

On motion of Steve Mahoney, — It was agreed — That, pursuant to Standing Order 109, the Committee request that the Government table a comprehensive response to the Report within one hundred and fifty (150) days.

On motion of Steve Mahoney, — It was agreed — That, pursuant to Standing Order 108(1)(a), the Committee authorizes the printing of the supplementary opinions as an appendix to this report immediately after the signature of the Chair; that the supplementary opinions be limited to no more than 2 pages; and that the supplementary opinions be delivered to the Clerk of the Committee no later than 5:30 p.m. on Wednesday, March 20.

At 4:10 p.m., the Committee adjourned to the call of the Chair.

Jacques Lahaie
Clerk of the Committee