To: Members of the Standing Committee on Citizenship and Immigration

From: The Southern Ontario Sanctuary Coalition

Description of the sanctuary Coalition's work:

The Coalition came into existence in 1992 to advocate on behalf of more than twenty refugee claimants (families and individuals) who, the Coalition believed, had been mistakenly rejected and faced deportation to dangerous situations. Most of this group of claimants were eventually landed and are now Canadian Citizens. This work has continued right up to the present. The Coalition is acutely aware of the kind of mistakes in the refugee determination process that can put people's lives at risk. Over the years we have sought to protect numerous refugee claimants whose lives were in jeopardy and we have submitted many briefs at the policy level to the appropriate authorities

Comments on Bill C-11

We welcome the introduction of an Appeal process and we respect the intention to provide a process that is both fast and fair. We are, however, deeply concerned that fairness will be compromised in the interests of speed. The circumstances which produce refugees are often complex and not infrequently it requires time to produce the appropriate evidence. Many claims are rejected as "not credible" but establishing credibility - in many respects the heart of the process – may require documentation that is not quickly available.

1. Eight days is too short a time for a claimant who may well have been through a traumatic experience and be totally unfamiliar with Canadian laws and regulations to be in a position to give a clear account of why she/he is making a refugee claim. Indeed, such a person needs legal counsel to help with the initial interview. We assume that the purpose of this initial interview is to provide a basic formulation of the refugee's claim. The result should be something in writing that the claimant agrees to, that the claimant's legal counsel agrees to and that the interviewer accepts as the claimant's simple statement of claim. A twenty eight day period to prepare for this initial interview would be a more realistic time frame than eight days.
2. The full preparation of a properly documented claim – with legal help – would normally require much more than sixty days. We suggest 120 days as more realistic and in some cases more time than that might be needed to assemble all the relevant evidence. Beyond the actual preparation of the necessary materials, the claimant needs to feel some trust in the process. People who have fled hostile officials and faced relentless interrogation are very likely to be less than coherent in their testimony at a refugee hearing and therefore apt to be judged as "not credible." When a person's life is at stake, providing due process may well take time. Stated time frames for the process may be useful as general guides but there needs to be flexibility in the system.
3. There are many refugee claimants who may not be regarded as "convention refugees" strictly defined but who may have an excellent case for landed status based on humanitarian and compassionate considerations, often including the best interests of the

child. The proposed legislation requires that such a claim be made at the outset *instead* of making a refugee claim or, twelve months after the refugee claim has been rejected. By that time, the person whose claim has been rejected, may have been forced to leave the country. These provisions are hardly fair. Humanitarian and Compassionate grounds need to be either part of the official hearing (or the appeal process) or there needs to be provision for such an application to be considered BEFORE a removal date.

4. A pre removal risk assessment is mandated by the Convention Against Torture and/or in principles enshrined in the Charter. Such an assessment might well be handled within the Appeal Process. Certainly, it should not be left in the hands of an official who is less than totally qualified to make such an assessment. Too much is at stake for the claimant.
5. In the proposed legislation, a person on the initial panel making the judgement about the refugee claimant's status will be appointed in accordance with the Public Servants Employment Act. Such persons do not have the independence that has been one of the virtues of the IRB up to this point. To insulate the process from political interference, it would be appropriate to have that judgement in the hands of someone removed from the jurisdiction of a government department.
6. Members of the Appeal Division (as well as those making the first level judgment) need to be appointed entirely on merit if the refugee determination process is to have integrity. The new legislation should be unequivocal on this point. Here is an important opportunity for reform but this issue is not addressed in the proposed legislation.
7. The fact that people from so-called safe countries are denied access to the Appeal Division is a deep flaw in the proposed legislation. The circumstances of such people may well require the most careful judicial consideration. If justice is to be served, they should not be denied access to an appeal process.
8. The bases (or criteria) for determining what constitutes a "safe" country are far from clear. A fairer course of action is indicated in point 7. Arbitrary authority is to be avoided at all costs.

There are other issues that could be raised but in the interests of brevity and sharp focus the points noted above are ones we believe to be absolutely crucial in a fair refugee determination system. We trust the Committee will give careful consideration to the matters noted above which arise out of two decades of work with refugee claimants facing deportation to situations of danger.

Michael Creal, Chair of the Sanctuary Coalition