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—
Chair

Mr. David Tilson

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• (1530)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I call the meeting to order.

This is the Standing Committee on Citizenship and Immigration, meeting number 62. This meeting is televised.

We're studying Bill C-43, An Act to amend the Immigration and Refugee Protection Act.

We have Mr. Richard Kurland, who is a policy analyst and lawyer. He has been here many times. We also have Ahmed Hussien, who is the national president of the Canadian Somali Congress.

Mr. Kurland, we'll let you go first, sir.

Mr. Richard Kurland (Policy Analyst and Lawyer, As an Individual): Today, buckle up. It might be a bumpy ride.

This is unusually complex in terms of subject matter. The appropriate direction has been taken to remove, swiftly, foreign criminals from Canada, no doubt about that.

The concerns I raise only pertain to two topics. One, I must take a pause. Much of the affected inventory of people will be comprised of long-term residents of this country, people who arrived at a tender age, two, three, four, or five years old. What I'm recommending for consideration is not with this particular bill before us but in connection with citizenship.

I see no reason why we cannot provide a grant of citizenship to individuals who have been living in Canada 10 years prior to their 18th birthday. This would capture the long-term legal residents of Canada who, for whatever particular reason, run afoul of our criminal justice laws. This would redirect criticism away from the point that, in effect, we are implementing a sense of medieval law, the law of banishment. That would be the first point.

The second relates to retroactivity. Now I assume, properly, that this proposed bill will not have retroactive effect, and the very purpose of law is to allow the individual to govern their behaviour. Imposing, with retroactive effect, the penalty of removal from Canada is incompatible with some of the tenets of our criminal justice system. The sentencing judge did not have the opportunity at the time of sentencing to deal with the individuals, so, ironically, rather than expedite the removal of criminals from Canada, it may well retard that effort, given the legal issues that are raised by the issue of retroactivity.

I also note that if it were an assumption that the retroactive application were to fall into place, we would have heard from affected groups and individuals. Witnesses would have been called upon to testify on the results of retroactive application. I'm hoping that our judiciary, when they review the transcripts of this standing committee, will note that retroactivity may or may not have been on the table. As far as I'm concerned, it's not on the table.

Having said that, I like clarity, transparency, and expeditious treatment. I'll close my opening remarks with this observation.

Over the 20 years or so that I've had the privilege and honour of appearing before this committee, I've noticed the trend of heightened requirement of sainthood over time when it comes to selection, when it comes to removals. I remember the rancour at each occasion when the triggering of loss of appeal was discussed—five years to two years, and now six months.

Well, is there something in logic, is there something rational that you can palpate to connect the dots as to why we have continually gone down the time chain to where we are now?

It's the very function of our parliamentary democracy to reflect the will of Canadians from coast to coast to coast. What is occurring in this legislation is the expression of the will of Canadians from coast to coast to coast. I have taken criticism personally and professionally for not doing more to combat the lowering of the threshold from two years to six months. But I would have to be in disagreement, and I am not.

• (1535)

I believe that in the big picture we are appropriately downloading to the criminal justice system the quality of mercy and the immigration situation of the particular individual because it is the role of the sentencing judge in a criminal court to look at the specific case and to make a decision that will affect the life of the person before him. It should not belong to the immigration system. It should be properly put in the criminal justice system. That also will address the regional variations in what people want.

In the big picture, I think we are doing the right thing here in terms of design. I have a problem with citizenship that is going to affect a large component of the affected group by these changes. I am dead set against the retroactive application of this legislation on several levels.

Thank you.

The Chair: Thank you, Mr. Kurland. You always give us food for thought.

Mr. Hussen, you have up to 10 minutes, sir.

Mr. Ahmed Hussen (National President, Canadian Somali Congress): Thank you, Mr. Chair, and thank you to the members of Parliament for inviting me.

My name is Ahmed Hussen. I am the national president of the Canadian Somali Congress and a lawyer by profession.

I am here to talk about the bill. In principle, I want to get on the record that the vast majority of my community, as well as other Canadians, do believe in the principle that we should deport foreigners who commit serious crimes. That's not in debate. The issue is implementation and who this proposed legislation would capture.

In its current form, the bill would disproportionately punish law-abiding, long-term, permanent residents who make one small mistake. This bill would limit the right to review for cases exceeding six months. This point is really important, because you can have a situation where someone didn't apply for citizenship, for whatever reason, but is otherwise a very long-term resident contributing to the success and prosperity of Canada. Because of one mistake, behind the wheel or otherwise, they find themselves in the situation where they are about to be deported.

The Chair: Excuse me, sir. We have bells ringing. We will have to leave, sir, because there will be votes in half an hour.

Do I have unanimous consent to allow Mr. Hussen to finish his remarks? Okay.

Mr. Ahmed Hussen: We have a few suggestions to make in terms of keeping the bill's principle alive, which is deporting foreign criminals who are serious criminals and a threat to this country and this society, but making a few changes that will reflect the disproportionality of some of the options.

One, we should definitely make an exception between conditional sentences and jail. In its current form, the bill does not do that. So you can have a situation where a permanent resident, facing jail time, may be sentenced by a judge in the community's interest to a conditional sentence due to the fact that the person is gainfully employed. But because of the nature of conditional sentences, they take longer to fulfill by their very nature. Ironically, that would actually lead to the capture of this person with this legislation because it would exceed six months.

We strongly urge that an exception should be made in this legislation between conditional sentences for first-time offenders and people who are facing jail time of more than six months.

A permanent resident who is given a conditional sentence in order to keep their job is a plus for Canada. Because of that positive approach by a judge, that should not lead to them losing their job and being deported because they opted for a conditional sentence. Otherwise, you would have a situation where permanent residents would opt for a jail term; they would lose their jobs or drop out of

university for a jail term of less than six months, and they would opt out of a conditional sentence availability to avoid deportation. When they come out, they are out of a job or they have dropped out of school.

The second point is to urge that ministerial discretion in humanitarian and compassionate cases should not be curbed. Ministerial discretion is there for a particular purpose. It is there in these cases when the law, on its face, cannot capture some of the unique cases that should be captured.

What springs to my mind is the case, for example, of the South African family whose child could only live in a place like British Columbia because they couldn't be exposed to direct sunlight. That's something the law doesn't capture, and it's something where we expect the minister to use his discretion in those kinds of cases.

• (1540)

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): On a point of order, Chair, was the witness just saying that we don't have direct sunlight in British Columbia?

Voices: Oh, oh!

Mr. Ahmed Hussen: For the most part.

Serious criminals should definitely be deported, but not well-established permanent residents who make one silly or minor mistake.

Last but not least, if we are going to capture thousands more people under this proposed legislation, we have no problem with that, but we also urge that, as a country, we should then take on the extra responsibility of helping those countries that are receiving these people in enforcing and strengthening their law enforcement capabilities.

I for one know of a few individuals who deserved to be deported. They were serious criminals, foreign nationals from Somalia who were sent back to Somalia, but the local authorities could not handle this influx of serious criminals, and not just from Canada, but from the U.K., Finland, Sweden, and so on. We can make a token donation to make sure that those societies can cope with what I expect will be an influx of people.

The Chair: Okay, we are going to adjourn—or suspend, rather—because we have to go to vote. The chairman's inclination.... Are you available to come back? We probably won't get back here till 4:30. Are the two of you available to come back at 4:30?

Mr. Ahmed Hussen: Yes, that's fine.

Mr. Richard Kurland: Yes.

The Chair: Okay. I'm going to unilaterally say that the minister will have to come another day.

This meeting is suspended.

[See *Minutes of Proceedings*]

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