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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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• (1530)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon. This is the Standing Committee on Citizenship and Immigration, meeting number 63, Monday, November 26, 2012.

This meeting is televised pursuant to the order of reference of Tuesday, October 16, 2012. We are in the process of clause-by-clause study of Bill C-43, An Act to amend the Immigration and Refugee Protection Act.

I presume you have all received the amendments from the different caucuses. The committee's clerk has received 23 amendments. One is from the government; nine are from the New Democratic Party; and thirteen are from the Liberal Party.

You will note that some amendments concern the same lines. The NDP amendments came first, so the NDP will have the first opportunity to.... It's nothing against you personally, Mr. Lamoureux, but that's the process.

Some of the amendments will have the same intent, so we'll have a general discussion before we vote.

Those are my preliminary remarks. We will postpone clause 1, as pursuant to Standing Order 75(1), that will go to the end of our deliberations.

We have three clauses for which there are no amendments. We'll try this and see how it goes.

Shall clauses 2, 3, and 4 carry?

An hon. member: No.

The Chair: Shall clause 2 carry?

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): No.

Sorry, I'm on the wrong line. Yes. That's my mistake. I'm awake now.

The Chair: Shall clauses 2, 3, and 4 carry?

Ms. Jinny Jogindera Sims: No.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): On division.

Ms. Jinny Jogindera Sims: Clause 2 carries.

Ms. Rathika Sitsabaiesan: No. Can we vote on each one separately?

(Clause 2 agreed to)

(Clause 3 agreed to on division)

(Clause 4 agreed to)

(On clause 5)

The Chair: We are now on clause 5 after all that.

Ms. Sims appears to have the first amendment.

Ms. Jinny Jogindera Sims: Thank you, Mr. Chair.

We have proposed nine very reasonable amendments which, if accepted, would help produce a more balanced piece of legislation. We hope members will give them fair and honest consideration. We remain committed to working with the government to make sure serious violent offenders are removed from Canada as quickly as possible, but we need to curb the excessive power this bill gives the minister and restore some due process rights to newcomers. Our amendments do just that.

It was clear from the testimony we heard that Bill C-43 is not a silver bullet when it comes to public safety.

The Chair: We're on clause 5, Ms. Sims.

Ms. Jinny Jogindera Sims: I was going to do the overall introduction first.

The Chair: You can proceed as long as you're not talking for a long time.

Ms. Jinny Jogindera Sims: I won't be. I have very few other comments left.

We sent this legislation to committee after we approved it at second reading because we wanted to work with the government to fix this piece of legislation so that it would achieve the intent of removing serious violent offenders. However, we need to address the lack of training, resources, and integration of information and monitoring technologies within the responsible public service agencies. The vast majority of newcomers to Canada are law-abiding people who want to build better lives for themselves and their families. We hope this committee can move on and spend more effort making sure that they are treated fairly, have the resources they need, and can be reunited with their families.

We ask for the support of all committee members for our first amendment. We believe it is a modest amendment to this clause, which creates an obligation for foreign nationals to appear for a CSIS interview if directed by an officer. The intent of this amendment is to limit the requirement of foreign nationals to answer questions at a requested CSIS interview to questions relevant to the actual application.

In his testimony to this committee, Lorne Waldman, representing the Canadian Association of Refugee Lawyers, said:

I don't think it's a bad idea that if CSIS officers are going to conduct interviews, they be given the authority to do so. My concern, however, is that when you embark upon this road, you have to realize that it's unprecedented to give CSIS officers the power to compel people to answer questions, because they've never had that power, and it's inconsistent with their role, some would say, as intelligence officers.

The brief we received from the Canadian Bar Association also raises concerns about the obligation to attend a CSIS interview. In it they say:

An unfettered obligation to answer queries from CSIS could in many cases be deeply problematic, as an individual could be placed in the unenviable position of having a legal obligation to provide information about others with no relevance to their own immigration application.

We agree with Mr. Waldman that if CSIS interviews are already being required in some cases, without a legislative framework, it is appropriate for this to be added to this bill. However, we share his concerns, as well as those of the CBA, about how this clause could be applied.

We would respectfully ask for the support of committee members to amend this clause so that these CSIS interviews have clearly defined parameters.

• (1535)

The Chair: I don't think we ever heard your amendment. Maybe you could do that.

Ms. Jinny Jogindera Sims: I will read the amendment.

The Chair: It's probably my fault, Ms. Sims. I should have asked you to do that at the outset.

Ms. Jinny Jogindera Sims: I move that Bill C-43 in clause 5 be amended by replacing line 14 on page 2 with the following:

must answer truthfully all questions relevant to the application put to them

The Chair: As you know, yours is identical, Mr. Lamoureux. Do you wish to speak to it?

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Yes, Mr. Chair.

What I'll do is address both. It's a good idea to bring forward this amendment. Obviously, both opposition parties have seen the merit in this. I guess, at first—

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): I have a point of order.

I'm not sure where were are.

The Chair: We're on clause 5—

Ms. Jinny Jogindera Sims: I just moved this amendment.

The Chair: Ms. Sims, please, you forget that I'm the chairman.

Ms. Jinny Jogindera Sims: I could never do that.

The Chair: I know.

We are on clause 5. There's an amendment by the New Democratic Party. Mr. Lamoureux is debating that and his amendment, which is identical to the NDP amendment.

There should have been a package all members of the committee received, Mr. Weston.

Mr. Lamoureux, you have the floor.

Mr. Kevin Lamoureux: Mr. Chair, before speaking to the amendment itself, much like the official opposition critic, I would like to take some latitude to provide some brief comments. I will keep my comments within a minute or a minute and a half.

I did want to express some disappointment in that as you are aware, the Liberal Party opposed sending this bill to committee, because we believe there are significant flaws in the legislation. We're not happy with the manner in which the government has proceeded. It has not listened, not only to what the Liberal Party has been suggesting, but also to a number of people who made presentations in regard to the need for amendments. In that sense we're quite disappointed.

We have brought forward a number of amendments. As the chair has pointed out, some of them are quite similar to the New Democratic Party amendments. It's a positive reflection when we have two opposition parties thinking alike in two different locations, recognizing the importance of some of the amendments that we're bringing forward.

The issue at hand with this particular amendment is to ensure that for those who are obligated to attend and answer questions, it is limited to the information reasonably required for that application. That, in a nutshell, is the purpose of bringing forward this particular amendment.

I would pose a question to you, Mr. Chair. As we go through this, when you say there are two amendments of a similar nature, are you going to be dealing with them both as one vote?

• (1540)

The Chair: Mr. Lamoureux, you'll notice that your amendment, which is on page 3 of the package, is identical to the New Democratic Party amendment. I think there are several cases throughout the clause-by-clause study where that occurs. I will try to remember to let whoever is going first...and the New Democratic Party's amendments came first, so they have precedence. I will try to remember that they're the same. You can debate yours and hers at the same time, but we'll be voting on the New Democratic Party's amendment.

Mr. Kevin Lamoureux: We wouldn't be voting on—

The Chair: No, we would not vote on yours.

Mr. Kevin Lamoureux: Thank you. That's what I wanted to know.

The Chair: Have you concluded your comments?

Mr. Kevin Lamoureux: Yes, I have, Mr. Chair.

The Chair: Madam Groguhé.

[Translation]

Mrs. Sadia Groguhé (Saint-Lambert, NDP): Mr. Chair, I would like to remind everyone of the importance of the support we gave this bill to have it referred to committee to be studied. At the outset, we thought it needed to be improved. That is why we are here, why we have these discussions and exchanges in committee.

As for the proposed amendment, my colleague and I are pointing out the importance of limiting the information disclosed and not go beyond that information. Therefore, I would like to give my support to what my colleague just stated in the context of this amendment.

[English]

The Chair: Is there further debate?

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Mr. Chair, I do have a question for the officials who are here.

It is somewhat problematic on two grounds. Ms. Groguhé said the difficulty is that we should limit the amount of information the individual would be required to provide. I have great difficulty around that, because it suggests the individual can do what we're hoping to prevent, and that is to hold back information, information that is necessary to the interview or to determine whether or not the individual who would be interviewed has done something that is contrary to the act.

That part concerns me off the top, and it's part of the reason we wouldn't support the amendment.

The other is the issue around what is currently required versus saying what is relevant. Perhaps we could get staff to find out what the intention is in terms of the interview process. Currently, when the CBSA has the opportunity to interview individuals, I understand or hope, to get clarification, the information is, generally speaking, relevant to the case that they're hearing versus their trying to find out information about other cases.

I can't see how an amendment such as this is actually suggesting that this is what's currently happening, and I would like to get some clarification on that.

The Chair: Thank you, Mr. Dykstra.

First of all, I was remiss in not welcoming the four members from the department.

We thank you for coming and helping us out with these amendments, as well as the other clauses in the bill.

Mr. Desmarais, do you have some comments on that?

• (1545)

Ms. Emmanuelle Deault-Bonin (Manager, National Security Policy Directorate, Department of Public Safety and Emergency Preparedness): I'll take that one, if I may.

To answer the question that was raised, indeed as it currently stands and as would continue to happen, the CSIS Act ensures that

the information collected during the interview is focused on what's required to provide advice to the immigration officials in order to assess the application at hand. This is the case right now, and that's found, again, in the CSIS Act.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you, Mr. Chair.

When you look at the actual wording that has been presented here, "must answer truthfully all questions relevant to the application put to them", if that is the current practice, then there is no harm in codifying it. That's what I heard my honourable colleague across the way say.

We're not saying that questions should not be asked, but the questions should be relevant to the application that is right there.

I was delighted to hear from the staff that this is already the practice. I think the practice needs to be codified. This would give us the kind of security we're looking for so that it's not a wide open area for fishing.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: The legislative process that we fall under requires that a change is needed to address an issue which, in the government's opinion, is deficient. If the issue at hand is not deficient, then there is no need to replace or reinforce what is already taking place.

The government won't be supporting the amendment, and in fact, understands what Ms. Sims is concerned about. I certainly share the same concerns. It is already being addressed within the act.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: I have a very quick question for Mr. Dykstra.

What would happen if the legislation that currently addresses it were to change at some point in the future? Would that not dictate that you would have to reintroduce a change to the current legislation in order to get the will?

Ultimately, if you're saying that, yes, you agree that the amendments that both the New Democrats and I are proposing are valid but not necessary because of other legislation, there's no way of knowing whether that legislation might change in the future. By allowing this amendment to proceed, what we're really doing is protecting the interests of what could be a very vulnerable individual.

Mr. Rick Dykstra: I understand the point, I think, but you don't change legislation or make amendments to legislation for what may or may not potentially happen in the future.

Unless either of the representatives here from Public Safety are going to confirm what Mr. Lamoureux suspects, that there is going to be some form of change in the act related to CSIS on this issue, should we be reinforcing something that may change? Sorry, that's a redundant question. I apologize.

There currently is no change in the works. If there were, we could revisit this issue, no doubt, if that were to occur.

The Chair: They probably don't know.

Mr. Rick Dykstra: They do not know. It was a rhetorical question, and I shouldn't have asked it.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: We're here with a piece of legislation that is quite overarching. It is quite intrusive in some areas, and looks at taking away some significant due process rights.

When we're looking at legislation, our job as legislators is to make sure it is really explicit and that things like this are built right in, not going on an understanding that somewhere else this is clear. We're looking for clarity in this legislation.

This codifies what you say happens and what staff have told us. Therefore, I'm finding it very difficult to understand why there would be resistance to codifying in legislation something that occurs. If you don't codify it, then things can be expanded upon and go in different directions.

Here is something really basic when you think of rule of law or of presentation. If you talk about a particular case, especially in legal forums, that's what you want to be questioned about and that's what this says. We thought this was such a reasonable amendment that my colleagues across the way would be saying that they could see the sense and logic in this.

I'm still hoping they will take a few seconds to think this one through, because this is the kind of legislation that can give comfort, and it costs the government nothing because they're not giving anything away.

● (1550)

Mr. Rick Dykstra: We can go at this for a while, Mr. Chair, but I've made my point.

The government believes staff will do their jobs. We're not in a kangaroo court when these interviews take place. There are individuals, both legal and otherwise, who make determinations as to whether a person will or will not answer a question, or needs to or does not need to present information. Not only is it already codified in the CSIS Act, but it is actually part of the legal process that is undertaken on a regular basis.

While I appreciate my colleague's vigour, I do believe that her concerns are met under the current legislation.

The Chair: All those in favour of this amendment?

Ms. Jinny Jogindera Sims: I would like a recorded vote, please.

The Chair: It will be a recorded vote, Madam Clerk.

Ms. Jinny Jogindera Sims: I'll be asking for a recorded vote on all the NDP amendments.

The Chair: You'll have to do it each time, Ms. Sims, because I'll forget.

Ms. Jinny Jogindera Sims: I will be there to remind you. If not, one of my colleagues will remind you.

(Amendment negated: nays 6; yeas 5)

The Chair: We will proceed to page 4, which is a New Democratic amendment, a second amendment for clause 5.

Ms. Sims, could you read the amendment first, please?

Ms. Jinny Jogindera Sims: I move that Bill C-43, in clause 5, be amended by adding after line 15 on page 2 the following:

(2.2) A foreign national who is requested to appear for an interview under subsection (2.1) has the right to appear with counsel.

The Chair: Ms. Sims, do you have comments?

Ms. Jinny Jogindera Sims: Yes, I do.

The Canadian Council for Refugees brought a further concern on clause 5 to this committee. In their submission, they said:

People applying for status in Canada are in a vulnerable position. All an officer needs is "reasonable grounds to believe" that the person is inadmissible on security grounds – in these circumstances, refusal to be interviewed and to answer all questions is likely to be enough to condemn the person. In some cases where the applicant is not represented by counsel, CSIS officers exploit the person's situation.

The CCR goes on to recommend that clause 5 be amended to include a statement of the right to legal counsel when being interviewed by CSIS.

The intent of this NDP amendment is therefore to provide foreign nationals who are required to appear for a CSIS interview with the right to appear with counsel. We think the additional language is moderate and reasonable and we respectfully ask for the support of committee members for this amendment.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I would like to get a response from staff about the process under which an individual can determine his or her own choice as to having representation.

Ms. Emmanuelle Deault-Bonin: As it currently stands and as it would continue under this amendment, during the interview, a foreign national can already have someone present, counsel or another representative. The only matter is, however, that the representative will be asked to not participate in the interview process. Again, in cases where the CSIS interview is requested, it is in order to provide advice to an IRPA officer, whether it be a CBSA or a CIC officer, to make a determination afterwards.

● (1555)

Mr. Rick Dykstra: Then, for the individual who is called to the meeting, what allowance or process is there for them to be protected? It sounded as if you were talking about the CSIS person sitting in.

Ms. Emmanuelle Deault-Bonin: The applicant can have someone present with them during the interview, whether it be counsel or some other representative. It's simply that the other individual would be asked not to participate in the interview.

Mr. Rick Dykstra: Thank you.

The other piece, which makes this somewhat redundant, is that the individual is already here on Canadian soil, and so the charter continues to apply. The individual has a right to counsel.

The Chair: Shall the amendment carry?

The amendment fails.

Ms. Rathika Sitsabaiesan: Is it a recorded vote?

Ms. Jinny Jogindera Sims: We want a recorded vote.

The Chair: Well, you can't ask for it after I have called it. You have to be snappy. We will do it this time, but if you ask after we have done the vote, we're not going to do it again.

Ms. Jinny Jogindera Sims: Thank you. I will be snappy.

The Chair: We will do it this time.

Ms. Jinny Jogindera Sims: Thank you very much.

Ms. Rathika Sitsabaiesan: I just want to ask you a procedural question.

The Chair: Sure.

Ms. Rathika Sitsabaiesan: To request a recorded vote, can you request it before the vote is finished, or is it before the vote has commenced? How does it work?

The Chair: I take it that as soon as I call the vote, the request must be made.

Ms. Rathika Sitsabaiesan: Thank you.

The Chair: It's a recorded vote, Madam Clerk.

Ms. James has a point of order.

Ms. Roxanne James (Scarborough Centre, CPC): I'm not sure whether it's a point of order or a point of clarification.

Is it standard practice that after the vote has taken place, we can go back and do a recorded vote afterwards? I'm just wondering why you're making an exception.

The Chair: You know, you are right. I am breaking some rule, but I do that from time to time. I am allowing Ms. Sims to have a recorded vote. You are absolutely right, Ms. James, but we're going to have a recorded vote anyway.

(Amendment negated: nays 6; yeas 5)

The Chair: Mr. Lamoureux, next is amendment LIB-3.

This is on page 5 of the package, ladies and gentlemen.

Mr. Kevin Lamoureux: Mr. Chair, I move that Bill C-43 in clause 5 be amended by adding after line 15 on page 2 the following:

(2.2) The following conditions apply in respect of any interview conducted in accordance with subsection (2.1):

(a) the foreign national has a right to counsel;

(b) any information procured and used to impair the liberty or security of the foreign national, or any third party, is subject to a fair and impartial review process, including requirements for the retention of interview notes; and

(c) the interview is conducted in a fair and impartial manner that promotes accountability.

The Chair: Mr. Lamoureux, you may make some comments here.

Mr. Kevin Lamoureux: Thank you, Mr. Chair.

This amendment takes into consideration the amendment we just finished voting on. It adds to it to give it a little more strength, in essence to ensure that the person being interviewed would have the right to counsel, that the interview would be recorded, and that there would be oversight mechanisms in place to ensure that the interviews are done in a fair manner.

The Chair: Shall the amendment carry?

Mr. Kevin Lamoureux: I would ask for a recorded vote, Mr. Chair.

The Chair: (Amendment negated: nays 6; yeas 5)

The Chair: Shall clause 5 carry?

(Clause 5 agreed to)

The Chair: Shall clauses 6 and 7 carry?

• (1600)

Ms. Jinny Jogindera Sims: Chair, when we've said no, what happens then?

A voice: It's on division.

Ms. Jinny Jogindera Sims: Okay, that's fine.

The Chair: Are Clauses 6 and 7 on division?

Ms. Jinny Jogindera Sims: Yes.

The Chair: I would prefer that you say that it's on division, because you may want to speak on something. You may want to speak to one of the clauses. If you say it's on division, then that's fine.

(Clauses 6 and 7 agreed to on division)

(On clause 8)

The Chair: The New Democratic Party has a proposed amendment.

Ms. Jinny Jogindera Sims: Do you want me to read the whole thing?

The Chair: Do we all know what she's doing here? Does she need to read the whole amendment? Do you all have the New Democratic amendment in front of you? Unless someone says something, I'm going to have her read the whole thing.

Do you agree that she can dispense with the reading of it?

Mr. Rick Dykstra: Agreed.

The Chair: Proceed with your comments, Ms. Sims.

Ms. Jinny Jogindera Sims: Mr. Speaker, with this amendment, we are proposing to do two very important things to limit the overly broad ministerial power to declare a foreign national inadmissible based on public policy considerations.

First, we suggest codifying word for word in the legislation the minister's own guidelines that he presented to this committee. When Minister Jason Kenney visited us on October 24, he suggested this approach when he said, "The committee may recommend that we codify these guidelines in the bill...". We hope that committee members will agree to do just that.

Second, and perhaps more important, this amendment introduces a new threshold for the exercise of this power. Specifically, the minister must have reason to believe that a foreign national meets one of the listed requirements in the guidelines.

There were many witnesses who raised serious concerns about this part of Bill C-43, but I would like to highlight the concerns set out in the submission by the Canadian Civil Liberties Association who said:

The Minister would be granted broad authority to deny entry to a high profile speaker on purely ideological or political grounds. Such a decision would engage the Charter protected freedom of expression and freedom of association of all Canadians.... In our view this provision has serious procedural flaws which undermine the rule of law, the cornerstone of a free and democratic society.

We concur with some of these criticisms and suggest that the current language is too broad and discretionary. Therefore, we would ask members to consider this very reasonable amendment to curb this overly broad ministerial power.

The Chair: Mr. Lamoureux, go ahead.

Mr. Kevin Lamoureux: Mr. Chair, we agree that if the government is going to use public policy considerations in order to deny entry, the criteria should be well defined in the legislation, but we also want to ensure the framework is one which is carefully reviewed and discussed in its own committee study.

We heard very little of what should be considered or included specifically in the framework in clause 8. As such, we'll be voting against this NDP amendment as well as the clause in Bill C-43 itself.

The Chair: Thank you, sir.

Ms. Sitsabaiesan, go ahead.

Ms. Rathika Sitsabaiesan: Mr. Chair, to follow what my colleague mentioned, we're really trying to make proposals that are actually valid to strengthen the legislation that is before us today. This amendment actually does strengthen the proposed legislation, Bill C-43 by including criteria which the minister himself spoke about. As my colleague, Jinny, mentioned, when the minister came to this committee, he introduced those suggested guidelines and even hinted to us that, as the committee, maybe we should look at putting it into the legislation.

We're taking his lead on this really when he suggested that maybe the committee would want to put it in the legislation. Rather than leaving it to the arbitrary discretion of the minister and broad-based public policy considerations that are still not really defined, I think it makes sense to put these into the legislation itself. It allows it to be more clear and transparent, and it moves us away from a precarious path of giving the minister more arbitrary power. Once again, it's one minister with an extremely high amount of arbitrary power. I do hope that our colleagues in the Conservative Party would support this amendment. It is a very reasonable amendment that looks to make

this legislation work. It would strengthen this piece of legislation which is what we're all working towards.

● (1605)

The Chair: Mr. Dykstra, go ahead.

Mr. Rick Dykstra: Mr. Chair, I do admire the fact that the official opposition has brought forward some of the suggestions—well, actually some of the recommendations—that the minister is going to be using at least in making his judgment.

First off, I think it's important to note that we're talking about an extremely small number of cases here, but in any event, it is a piece of legislation, so we should be having this discussion. The minister deposed how he's going to make his decisions on this related clause. In fact, they're on the CIC website as we speak, just to ensure that everyone's aware of how he will be interpreting and using his responsibilities under negative discretion.

If we move forward on this, it would fetter the opportunity to reflect both from the ministry's and the minister's perspective. It would weaken the potential discretion if we were to include everything that the opposition has mentioned. I would appreciate it if staff could respond to that in terms of why it is necessary to maintain the discretion that is currently in the legislation.

Ms. Karen Clarke (Deputy Director, Migration Control and Horizontal Policy, Department of Citizenship and Immigration): To respond to that comment specifically, keeping the guidelines outside the legislation allows the minister to react to situations that may be unanticipated or unexpected. It's a way to react more quickly than if it were codified within the legislation. One of the aspects is that it would lose the flexibility.

Also, it is an authority that is similar to those that we find within our five country conference partners, most notably, the U.K.

Mr. Rick Dykstra: Thank you very much, Ms. Clarke.

I know that part of this stems from the transparency with respect to Bill C-31, when we talked about safe country of origin and how we moved it from being a regulatory piece attached to the bill and included that transparency right within the bill itself, but those are exceptions to the rule. I credit the opposition and Ms. Sims for pushing on when we dealt with this issue in Bill C-31, agreeing in a convincing way that it was important to have that transparency.

That is not the regular process upon which we build legislation and, as indicated, the framework that will be utilized on negative discretion will be built into regulation. In fact, it's already public. Ms. Sims is correct. She read from the document itself, and that is a document which will be the guiding lamppost in terms of decision-making for the minister.

The fact that we need to maintain some discretion beyond that is critical. I hope the opposition understands that there are circumstances which would elude the information brought forward. If we were to put it in the legislation, it would prevent us in certain circumstances from being able to make a decision that would be necessary.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: I cannot stress how important this particular amendment is for us. As my colleague across the way just said, we actually took what the minister put forward. I was tempted to amend it greatly before putting it in an amendment, but we took the minister at his word when he said that the committee may want to do that. We thought we had a better chance of getting it into the legislation if we left it fairly close to what the minister had put before us.

We are very concerned about this sort of limitless power in the hands of the minister. Yet all our amendment does is to put into legislation the very guidelines, the lamppost, as my colleague said, that the minister talked about, so that they would be right here, clear and explicit. Everybody would know they are here and that they cannot be changed on a whim.

Also, for us, public policy consideration is such a huge umbrella that it covers the globe and not just Canada. I want to say we were appreciative that the minister had given this some thought and heard our concerns. I was quite impressed when he said in front of us that we may decide to stick it in the legislation. I'm hoping that his colleague across the way will remember what the minister said. Based on that, I didn't think the minister had any problems with putting it in legislation. He was inviting us to do that, or at least to consider it.

I want to stress to my colleagues across the way that we're very interested in working on a piece of legislation that will lead to the quick removal of serious criminals. However, we are not prepared to give the minister an umbrella of this size and this kind of discretion without it being codified in legislation. I want to stress the importance of our addressing this issue here at this stage.

•(1610)

The Chair: Thank you, Ms. Sims.

Mr. Weston.

Mr. John Weston: I thank my colleagues from the opposition for bringing up these issues. We all know that whatever party is in power, there may be another party in power another day, and whatever discretion is to be limited ought to be limited in accordance with good democratic values. I see where Ms. Sims is coming from.

[Translation]

I have some questions for the departmental representatives here today.

This may be a bit repetitive, but I would like to know what type of report the minister now needs to submit to the House. What is the difference between what my colleagues are requesting in this amendment and what the minister's responsibility is with respect to a report?

[English]

Ms. Karen Clarke: Mr. Chair, if I may, section 94 of the act already provides a requirement to report to Parliament. There are a few instances where it codifies what types of things the minister must report on. For instance, gender-based analysis is one.

In the proposed amendment is a requirement to add this as another item which the minister would be required to report on. It's something that's not currently in Bill C-43, but we do have the flexibility that we could report on and include the instances where this authority is used within that annual report.

Mr. John Weston: I'm sorry, I didn't understand that response.

Ms. Karen Clarke: If I may clarify, the question was regarding what the minister is required to report on currently.

Section 94 of the act outlines what the current requirements are. There are only certain things listed there in terms of what must absolutely be included in that annual report. The response is that although there is no reporting requirement associated with this provision, we are suggesting to include the instances where it is used in the report.

•(1615)

Mr. John Weston: What is the difference between what is being proposed by my friends in their amendment and what exists already?

Ms. Karen Clarke: The amendment would create a reporting requirement more specific than what's currently provided in the annual report. We're suggesting that there's flexibility to include, to report on, the use of the authority, but it's not as itemized.

The Chair: How would you do that if it's not itemized?

Ms. Karen Clarke: There's flexibility to include other things within that report.

The Chair: Where's that?

Ms. Karen Clarke: Excuse me for jumping ahead a bit.

The Chair: We have another player. The analyst is going to speak.

Ms. Jillan Sadek (Director, Case Review, Department of Citizenship and Immigration): I'm sorry, I think you're on the next amendment, which talks about reporting requirements. We're still on the previous NDP amendment. I think we have it as NDP-3.

Mr. John Weston: I think you're right. Sorry to confuse you.

The Chair: You're fine?

Mr. John Weston: I'm okay.

The Chair: Okay.

Madam Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: Mr. Chair, that means that we are forgetting what Ms. Clarke just said?

Fine.

[*English*]

The Chair: I'm just the chairman.

[*Translation*]

Mrs. Sadia Groguhé: Quite obviously, I would like to support this amendment because it is extremely important.

I would like to respond to Mr. Dykstra, who thinks the amendment will dilute the minister's powers. I think it will only define them. We heard testimonies that alerted us and that made reference to concerns about the minister's discretionary power.

I think it is important to consider all these testimonies. We want to limit and define the concept of public interest more specifically. We would also like to define the minister's discretionary powers.

This is just to clarify. I think we wanted to be clear from the beginning. We spoke about improvements and clarifications to be made to Bill C-43. I think we still have that same perspective. It's important that the government can follow our lead with this amendment.

[*English*]

The Chair: Thank you, Madam Groguhé.

Ms. Sims.

Ms. Jinny Jogindera Sims: This is an instance when you may wish you had read out the amendment, because it helps to keep us all on the same page.

When you look at this amendment, what we've done is we have taken what the minister said was going to be in regulations and moved it into the legislation. It does not change any of the exclusions with respect to: "has promoted or glorified terrorist violence; has promoted or glorified a listed entity under...; has counselled, encouraged or incited others to commit terrorist activities; has incited hatred that is likely to lead to violence...; has promoted, counselled, encouraged or incited serious criminal activity; is a foreign national of a country against which Canada has imposed sanctions under the United Nations Act or the Special Economic Measures Act; is a former or current senior official of the government of that country, or is an associate or a relative of an official...; or is a foreign national who is a politically exposed foreign person listed in regulations made under the Freezing Assets of Corrupt Foreign Officials Act".

We took what the minister presented to us and moved it here. It was not to score points or to make political hay out of this. I wanted to condense these down to two or three, but we thought that no, we came here to make this legislation work. I'm hoping my colleagues across the way will see how far we have gone with this. We took up

the invitation of the minister, who didn't see a problem with this being in the legislation. I hope that members will give it some serious thought before we move to the recorded vote.

• (1620)

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chairperson, when Bill C-43 first came out, it was one of those hot issues which not only members of Parliament but many different stakeholders interested in this whole file jumped on. The issue is one of public policy considerations and how wide open that was. There was a great deal of concern. Then the minister, quite a bit later, indicated, "Well, you know, this is kind of like what I mean". I'm happy that he has something now listed on the Internet, but those are all things that can change quite easily also. People need to be aware of and concerned about that.

The issue before us now is not whether the government will vote down this amendment. I will be voting against the amendment. However, there's got to be concerns in terms of where this particular list comes from. Is it all-encompassing? Is it possible that something might have been missed? We don't know. To what degree did we afford presenters the opportunity to come to the committee and say, "You're missing this" or "Why would you include this?", in terms of the amendment?

That's why I think it's premature for us to support the amendment, but I do believe it highlights the importance, in terms of the whole public policy consideration, which is a huge flaw in the legislation itself. If we really want to deal with this, I would suggest that we defeat the amendment and then defeat the clause itself, and send it back to the drawing board. That's what I would recommend to all committee members.

The Chair: Shall NDP-3 carry?

Ms. Jinny Jogindera Sims: Recorded vote, please, Mr. Chair.

The Chair: It's a recorded vote, Madam Clerk.

(Amendment negatived: nays 7; yeas 4 [See *Minutes of Proceedings*])

Ms. Jinny Jogindera Sims: Mr. Chair, I don't think I have the words to express my great disappointment that our leap to make this legislation work was defeated.

The Chair: We're on amendment NDP-4.

Unless we hear from the committee, I will assume these amendments don't need to be read. Is that agreed?

Some hon. members: Agreed.

The Chair: Proceed.

Ms. Jinny Jogindera Sims: We also believe in maximum accountability and transparency when it comes to the exercise of ministerial powers. It doesn't really matter which political party is in power. We're talking about ministerial powers and it is not directed against one individual or one minister.

To that end, we are proposing an amendment to create a reporting mechanism to ensure greater oversight by parliamentarians, like ourselves. Specifically, the intent of this amendment is to promote transparency and accountability in the minister's exercise of the prescribed ministerial power by requiring that the minister include statistics on it in the annual report to Parliament on immigration, including information on: one, the total number of declarations made; two, the period of time for which the declarations were made; three, the number of declarations that were revoked or shortened; and four, the reasons the declarations were made.

Again, we think this is a reasonable amendment—so far we have failed to convince the other side—and hope that the committee members will vote in favour of greater transparency and accountability. After all, that is what we all want.

• (1625)

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Chair, to reinforce the point, at the end of the day, whether it's amendment 3 or amendment 4, the fact is the minister is accountable to Parliament. Not being able to defer to ministry officials, not being able to defer to a court, not being able to defer to the IRB, he or she will be responsible fully to Parliament, because, on an annual basis, a report is going to be submitted. In fact, it happens already. It will include all of the issues of both negative and positive discretion.

I actually understand Ms. Sims' point here. I do think it is relevant. It is actually going to be addressed in the annual report that the minister must submit. He will include within that report the decisions made with respect to both negative and positive discretion.

Perhaps we could have Ms. Clarke or Ms. Sadek comment on the annual report, and how both the negative and positive discretion decisions will, in fact, make up part of that report.

Ms. Karen Clarke: Mr. Chair, I would like to add to some of my previous comments. There is flexibility. We may include information in the report on the instances when it was used.

I would like to highlight one point about the privacy of the individual. It would need to be respected in accordance with the Privacy Act. The information included in such a report could be similar to what we include today in terms of statistics that outline the uses of authorities.

The Chair: Shall amendment NDP-4 carry?

Ms. Jinny Jogindera Sims: I would like a recorded vote, please.

The Chair: We're doing well here.

(Amendment negatived: nays 6; yeas 5 See [*Minutes of Proceedings*])

The Chair: We are on amendment LIB-4. Go ahead, Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chairperson, I am going to read it so that people are aware of it.

I move that Bill C-43, in clause 8, be amended by adding after line 2 on page 3 the following:

(4) The Minister must, within 30 days of the coming into force of this section, table in each House of Parliament a list containing the criteria of public interest that will be used to determine the policy considerations to be taken into account for the purposes of subsection (1).

Mr. Chairperson, ultimately this would require that the minister table in Parliament the criteria used to determine denials, based on public policy considerations, 30 days following the coming into force of the bill. I think it takes it another step forward. That's as opposed to putting it on the Internet and having the minister decide one day to make a change. There would be no real accountability to the House.

I would encourage members to give it serious consideration.

The Chair: Is there debate?

Go ahead, Mr. Dykstra.

Mr. Rick Dykstra: I'm not sure about the last part of Mr. Lamoureux's comments about how changes to a regulation actually would impact reporting back to the House.

I want to make the same points I made on Ms. Sims' amendment.

First, the minister is accountable to Parliament, which I think needs to be recognized. Second, when it comes to negative and positive discretion, those are decisions and responsibilities that will be solely the minister's. It will not give him or her the opportunity to hold staff or ministry officials accountable. Therefore, we know that whoever is the minister is going to make these decisions with a great deal of consideration, based on the fact that he or she will, in fact, be responsible.

The other part, as I indicated with respect to the previous amendment, is that we have a process in place. As Ms. Clarke mentioned, it is a process that will include reporting back to Parliament within the annual report. It covers a 12-month period. Save and except, and I'm glad Ms. Clarke pointed this out, the fact that we need to ensure that we're following the Privacy Act, this will be fully reported.

Starting to put timeframes on these types of reporting mechanisms and measures could inhibit a report coming to Parliament, or one that is substandard, incorrect, or inconclusive because ministry officials wouldn't have the time to put together the report within that 30-day period.

Part of the reason Parliament anticipates and expects annual reports is that citizens, organizations, companies, opposition members and government members of Parliament are able to review the decisions made by a ministry and by the minister during a given year. I know that we are providing it within the act as we speak. I know that the minister is going to have to report back to Parliament on a yearly basis with respect to this decision-making process.

I'd ask officials if I have missed any of the pertinent points in terms of making sure that we deliver this to Parliament on an annual basis.

● (1630)

Ms. Karen Clarke: No, I don't have anything to add. Thank you.

The Chair: Is there any debate?

Shall Liberal amendment LIB-4 carry?

Mr. Kevin Lamoureux: Could I have a recorded vote?

(Amendment negated: nays 6; yeas 5)

The Chair: We'll go on to Liberal amendment LIB-5, Mr. Lamoureux.

Mr. Kevin Lamoureux: Thank you, Mr. Chair.

I move that Bill C-43 in clause 8 be amended by adding after line 2 on page 3, the following:

- (4) The Minister must, within 30 days of making a declaration under subsection (1) that a foreign national may not become a temporary resident, table in each House of Parliament a report on the reasons for the declaration.

To keep it short, Mr. Chair, in essence the minister would have 30 days to report to the House when an individual is denied entry based on public policy considerations.

The Chair: Is there any debate?

Mr. Dykstra.

Mr. Rick Dykstra: Because we received the amendments fairly late in the day today, and I know that's the way the process worked out over the weekend, I would ask that we return to this Liberal amendment LIB-5 at the end. We would continue the process, but this would allow us to do a little more background work on this.

The Chair: Is that agreed?

An hon. member: Agreed.

The Chair: Mr. Weston.

Mr. John Weston: Mr. Chair, I take it that even with this agreement, we can still ask a question on this specific clause while we're on it, or do you not want to do that?

The Chair: Why don't we wait until the end. I don't know what the government is going to do. It will be a surprise. Let's wait until that comes. We will not vote on clause 8 or Liberal amendment LIB-5 until some future time.

Mr. John Weston: I had a question that I thought Mr. Lamoureux might be able to answer while we're on it, but if you want, we can wait.

The Chair: I would prefer that you leave it until then.

(Clause 8 allowed to stand)

(On clause 9)

The Chair: We're on clause 9, amendment NDP-5.

● (1635)

Ms. Jinny Jogindera Sims: I move that Bill C-43 in clause 9 be amended by replacing lines 7 to 16 on page 3 with the following:

or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister has reasonable grounds to believe that it.

Mr. Chair, we believe we need to address an issue here that gives us considerable concern. Both clauses 9 and 10 cause us great concern as they remove the possibility of humanitarian and compassionate consideration from the minister. The consequences of the best interests of an implicated child would no longer be considered.

In their brief to this committee, Amnesty International put their concern this way: "Eliminating the possibility of humanitarian relief for these types of people runs afoul of international law. Denying individuals access to this process might result in them being sent to torture...or persecution...".

The Canadian Council for Refugees points out that these inadmissibility sections are extremely broad and catch people who have neither been charged with nor convicted of any crime and who represent no security threat or danger to the public.

New Democrats believe that the minister should not be relieved of the obligation to consider humanitarian and compassionate circumstances, including the best interests of children. Therefore, we are moving this amendment that restores the minister's ability to consider these factors with the caveat that the minister has reasonable grounds to believe it is justified.

We think this amendment will help dull one of the sharper and more mean-spirited edges of this bill and at the same time will constrain the minister's duty to consider humanitarian grounds generally.

The Chair: Debate.

Mr. Lamoureux, and then Ms. Sitsabaiesan.

Mr. Kevin Lamoureux: Mr. Chair, I'm going to attempt to deal with this amendment and the NDP's next amendment by making the one statement.

I would say that we do support—

The Chair: Have I got a promise, because are you talking about clause 10?

Mr. Kevin Lamoureux: Yes, I'm going to make reference to both clause 9 and clause 10, Mr. Chair.

The Chair: All right, if you phrase it like that, that's fine.

Mr. Kevin Lamoureux: Thank you, Mr. Chair.

We do support the amendment, but I want to highlight that we are against the removal of access to the House of Commons for those found to be inadmissible under sections 34, 35, and 37. Many witnesses testified that those sections are very broadly interpreted by the courts. In particular, I'd like to quote from Mr. Andrew Brouwer's testimony:

The inadmissibility provisions that are already in IRPA are extremely broad and catch people who have committed no crime and represent no danger to safety or security. Among those who are affected already are people who are inadmissible simply because they worked against a repressive regime or an undemocratic government in their own country. It is by now a cliché to observe that the anti-apartheid hero Nelson Mandela—Nobel Prize winner, honorary Canadian citizen—could be caught up by the revised section 34, as it is drafted.

Mr. Chair, there were other presenters who made some fairly sound arguments. That's the reason we're prepared to support clause 9, the amendment the member has brought forward, and her next one on clause 10.

The Chair: Ms. Sitsabaiesan, please.

Ms. Rathika Sitsabaiesan: Mr. Chair, I don't want to sound like a parrot but I want to echo—

The Chair: A what?

Ms. Rathika Sitsabaiesan: A parrot.

The Chair: A parrot.

Mr. Rick Dykstra: I thought you said "parent".

The Chair: I think she said "parrot".

Sorry about that. Carry on.

Ms. Rathika Sitsabaiesan: I assume all can hear me now. Should I project a little bit more?

The Chair: That would be good.

Ms. Rathika Sitsabaiesan: Okay. It might help if you put the earpiece on too.

I want to underline some of what we've heard from witnesses during the course of the study on this bill.

We heard from a number of witnesses who said the net is being cast too widely and they addressed sections 34, 35, and 37. Section 34 of IRPA is on security and inadmissibility. Section 35 is on human or international rights violations, and section 37 is on organized criminality. Sections 34, 35, and 37 are too broad in IRPA and may unintentionally and unjustly exclude people who would present no threat or danger if they were to come to Canada.

I want to go back to an example that the Canadian Council for Refugees provided in their briefing to the committee. The example was an Iranian girl who was involved with an opposition group when she was a teenager. She attended meetings and went to demonstrations and handed out flyers. Because of her political activity, she was arrested and imprisoned for five years in the Evin prison in Iran where she was tortured. She later fled and came to Canada. She has been found to be inadmissible on security grounds because of her association between the ages of 14 and 16 with the banned group.

This young woman, who was really just fighting for her rights, fighting for her ability to exist as a person, and was giving out flyers, was tortured in a prison and escaped and came to Canada, and now

we're deeming her inadmissible. I think she's a great example of somebody who really wouldn't pose a threat to Canadian citizens or the Canadian community if she came here. We know from legal experts that this net is being cast too broadly.

Once again, I am going to defer to the expertise of the lawyers and the people on the ground who have been dealing with these cases day in and day out, who have again and again said that this net is being cast too widely and that we should make adjustments to it.

● (1640)

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: First, I want to be clear. The example that you're citing, is that the one the Canadian Council for Refugees brought forward who was actually a failed refugee claimant?

Ms. Rathika Sitsabaiesan: Yes, from their briefing itself.

Mr. Rick Dykstra: Right.

They used a failed refugee claimant as an example of why the legislation doesn't work under criminals with permanent residency in Canada. I want to be clear, because I remember going at this and the example put forward was not about someone who was actually successful in achieving refugee status in Canada, so she didn't have the type of status that.... I don't even know why they ended up in the examples; it was a little ridiculous in my opinion. It was someone who they believe should have been granted status, didn't qualify under our very fair refugee process and wasn't able to achieve refugee status, so I don't know why that would enter into the discussion around the legislation.

I will say, though, when it comes to talking about clause 9, proposed subsection 25(1), it is so clear. I'm a little unsure. I'm starting to understand, I think, the misinterpretation Ms. Sims may have with this proposed subsection. If you read it, it's very clear:

25(1) The Minister must, on request of a foreign national in Canada who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 —, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

It's already there. That's what is going into the legislation. We are ensuring that the minister will be taking into account the best interests of a child. The only change that this makes, basically, is that the minister will not examine a request for humanitarian and compassionate considerations pursuant to section 25 from a foreign national who is inadmissible on security grounds for human or international rights violations or organized criminality.

I'm not interested in amendments that would allow those involved in organized crime, or those who seek to oppress human rights, the opportunity for humanitarian and compassionate appeal. What we're doing is ensuring that a very select and a named group of individuals do not have access to humanitarian and compassionate, H and C, consideration. If you take a very close look at proposed section 25, the last part of the section actually takes into account the best interests of a child directly affected. It's right there.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: I will reiterate that we believe that the legislation should not relieve the minister of his obligation to consider humanitarian and compassionate circumstances, including the best interests of children.

• (1645)

Mr. Rick Dykstra: Okay.

The Chair: Mr. Weston.

Mr. John Weston: I'm listening very closely. I simply don't understand why any member would be striving to avail someone of consideration on humanitarian and compassionate grounds who fell into the category of a war criminal or organized crime figure. I'm not getting that, so I won't be voting in favour of the amendment.

The Chair: Okay.

Shall amendment NDP-5 carry?

An hon. member: I would like a recorded vote, Mr. Chair.

(Amendment negated: nays 6; yeas 5)

The Chair: Shall clause 9 carry?

An hon. member: I would like a recorded vote, Mr. Chair.

(Clause 9 agreed to: yeas 6; nays 5)

(On clause 10)

The Chair: We're moving to clause 10 on which we have proposed amendment NDP-6.

Ms. Sims.

Ms. Jinny Jogindera Sims: Mr. Chair, I move that Bill C-43, in clause 10, be amended by replacing lines 26 to 31 on page 3 with the following:

or who does not meet the requirements of this Act and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister has reasonable grounds to believe that it is justified.

Similar to our amendment to clause 9, this amendment seeks to restore the minister's ability to consider humanitarian and compassionate grounds, including the best interests of children involved.

I want to point out that the TCRI, which represents 142 community organizations in Quebec, which assists immigrants and refugees, submitted that the complete exclusion of humanitarian and compassionate considerations in these contexts is contrary to Canada's international obligations under the International Covenant on Civil and Political Rights, which, among other things, provides protections of family rights and security of the person, and as well

violates Canada's obligations under the United Nations Convention on the Rights of the Child.

While we may agree that dangerous, violent criminals should be removed from Canada as quickly as possible, we hope that committee members would also recognize that it is important to make sure the minister can still consider the protection of children in these cases.

The Chair: Is there any debate?

Ms. Jinny Jogindera Sims: A recorded vote, please.

(Amendment negated: nays 6; yeas 5)

The Chair: Shall clause 10 carry?

• (1650)

Ms. Jinny Jogindera Sims: A recorded vote, please.

(Clause 10 agreed to: yeas 6; nays 5)

(Clauses 11 and 12 agreed to on division)

(On clause 13)

The Chair: We're on government amendment G-1, which is on clause 13, ladies and gentlemen.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Chair.

I move that Bill C-43, in clause 13, be amended by adding after line 24 on page 4 the following:

(2.1) Paragraph 34(1)(f) of the Act is replaced by the following:

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

Chair, paragraph 34(1)(b.1) that you see was actually excluded from the original bill, and therefore we are inserting paragraph 34(1)(b.1) so that it in fact is consistent with the intent.

The Chair: Debate.

(Amendment agreed to on division)

The Chair: Mr. Lamoureux, we're still on clause 13. We have Liberal amendment LIB-6.

Mr. Kevin Lamoureux: Mr. Chair, I'm going to withdraw the amendment, if I may.

(Amendment withdrawn)

The Chair: Thank you.

(Clause 13 as amended agreed to)

(Clauses 14 and 15 agreed to on division)

(On clause 16)

The Chair: On clause 16, Ms. Sims has amendment NDP-7, which is on page 16 of the package, ladies and gentleman.

Ms. Jinny Jogindera Sims: I move That Bill C-43 in clause 16 be amended by replacing line 39 on page 4 with the following:

misrepresentation, unless there are reasonable grounds to believe that the misrepresentation was unintentional, for a period of five years.

As committee members know, clause 16 increases the penalty for inadmissibility for misrepresentation from two to five years and precludes a foreign national from applying for permanent residency status in that period. It would therefore also limit family sponsorship.

It's in the interest of working with government to get this legislation through and fix it that we are moving this amendment, specifically to make an exemption for those who might have entered data unintentionally.

Many witnesses have said that five years is overly punitive, especially where misrepresentation was made by an inadvertent error. The NDP members on this committee share this concern. The Canadian Council for Refugees, in their submission to us, points out that a five-year inadmissibility is excessively harsh in cases of minor infractions when a person was acting under some form of duress.

They offered two of many examples where this would be an unfair punishment. Number one is a woman who didn't declare a husband or child because of social and family pressures. Number two is an applicant who was not personally responsible for the misrepresentation because of an unscrupulous agent or even a family member who filled out the forms for them.

It is this second case I find particularly troubling. I believe that we must make sure to punish those who are criminally misrepresenting themselves and not victims of shady consultants.

While the CCR recommends that we simply delete this clause, we are proposing a very moderate alternative. Our amendment creates an exception for permanent residents and foreign nationals who are inadmissible for misrepresentation that is demonstrably unintentional. We think that this strikes the right balance.

We urge committee members to support this amendment to mitigate clause 16 from unintended consequences.

• (1655)

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I would like to get our staff to respond to Ms. Sims' concerns.

How are we in fact addressing honest errors and omissions in terms of the penalty? What are the penalties that are similar to this in other jurisdictions that we have taken a look at?

Ms. Jillan Sadek: Mr. Chair, I can address the question.

The Chair: Okay, go ahead.

Ms. Jillan Sadek: Currently an officer has to be satisfied that the misrepresentation essentially was not unintentional or accidental. There is a use of judgment there. Where they believe it was just an honest mistake, they're not actually found inadmissible.

For example, for A40 to be applied, for misrepresentation to be applied abroad, it's even a certain delegation of person, a certain level of individual, who has to make that call. Considerations are weighed very carefully before a finding of misrepresentation is made currently.

In terms of what other countries have, there are a few examples I have here. In the United States they do have a lifetime inadmissibility. In the United Kingdom it is up to a 10-year bar on re-entry, and Australia has a three-year bar.

Mr. Rick Dykstra: If an individual feels that there was an error in omission and they have a judgment against them that they believe is unfair, what appeal mechanisms will be in place for them to pursue that?

Ms. Jillan Sadek: They will have access to make an application for leave and judicial review at the Federal Court if they think there was an error in the assessment of their application, namely, that there was a misrepresentation finding that was not done fairly. That would be the main mechanism in most cases, the application for leave and judicial review. In other cases, depending on the class of immigrant, they may also have an appeal, for instance, to the immigration appeal division. Certainly, clients are routinely asking for reassessment of their applications, so there are various mechanisms within the department where we hear informal processes for appeal. They will come in or write to the actual visa office or the local office that made the finding, or they may write to headquarters. We have a case management division that handles this type of inquiry.

Mr. Rick Dykstra: At that point, are they allowed to submit new evidence of their claim?

Ms. Jillan Sadek: When you're making an application for leave in a judicial review, there's no new evidence. On appeals, depending again on the class of immigrant, there is new evidence that may be heard. But in general, the administrative law process is that once a decision is made, you would not be submitting new evidence for consideration.

I also wanted to point out that the idea we want to get across to clients is that they're responsible for the information they put in their application. I just wanted to add that.

Mr. Rick Dykstra: The point I wanted to make was on introducing new evidence. It wasn't at the Federal Court level. It was within the mechanisms available to them, whether it be through just a general appeal to the ministry itself...

Ms. Jillan Sadek: Yes, when someone's being refused overseas, for instance, there's a procedural fairness letter that goes out to them, which gives them an opportunity to reply to the concerns of the officers. That would be an instance where prior to refusal or prior to the inadmissibility finding, the client would have an opportunity to disabuse the officer of any concerns they may have.

I hope that's helpful.

Mr. Rick Dykstra: Yes, it's very helpful. It confirms, Chair, that the amendment isn't necessary. I think it has some intent, but I think the intent is already built into the system.

Misrepresentation in all of these cases must be significant and it must be consequential. If it's insignificant and it's not intentional, then there is the potential for them obviously to have it reviewed. There is also the intention of procedural fairness. If you're going to put in an amendment the suggestion that there is going to be inherent failure, then you have to be extremely concerned about any type of legislation that you bring forward. I do believe we have a system that currently addresses these issues and I think the penalty is a fair one. We've heard that it actually doesn't even come close to some other countries that we have looked to in terms of where they are with this legislation. I think we've built in everything we need into the current legislation.

• (1700)

The Chair: Thank you.

Mr. Weston.

Mr. John Weston: Can I just be clear on this? This is someone who's not yet a permanent resident, who's applying and who is alleged to have made a misrepresentation in the application. Is that correct?

Ms. Jillan Sadek: Yes, that's one of the ways misrepresentation can be applied.

Mr. John Weston: Okay, and a misrepresentation requires intent, right? For it to be a misrepresentation in law, doesn't there have to be some intent involved?

Ms. Jillan Sadek: As I say, there's judgment involved. Where someone's put something in an application, you don't necessarily have to establish intent. They are responsible for what's contained in their application. There are Federal Court decisions that have supported our interpretation of this.

Mr. John Weston: Thank you.

The Chair: Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: Mr. Chair, the spirit of the amendment we are proposing is important. I think we must really consider this concept of the benefit of the doubt that may be accorded someone at a given time. I think that's an important concept. In fact, I think that judging the good faith of a statement is without a doubt quite subjective.

If it isn't possible to give someone who has unintentionally provided a false statement a chance to rectify the situation, that is harmful. The bill as it currently reads makes no distinction between fraudulent misrepresentation and false statements made in error.

Our amendment moves in that direction. We hope that this distinction is being considered and that it appears clearly in the wording of this clause.

[*English*]

The Chair: Thank you.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I'm thinking in terms of individuals abroad who would fill out their forms and along with the forms would have to provide background information, educational documents, work history, and so forth. If, for the sake of argument,

someone submits a certificate and the immigration office abroad is not able to get verification of that certificate, they will often rule that it is misrepresentation, because they couldn't locate it. The facility might not exist anymore, or something of that nature.

Does the immigration officer have the discretion to override things of that nature, or if the immigration officer himself or herself says that it is misrepresentation, what sort of an appeal is there? Is there someone else the person could go to, or does it remain with the immigration officer?

The Chair: Ms. Sadek.

Ms. Jillan Sadek: Overseas, if these officers suspect that it's a fraudulent degree for instance, but they can't nail it down, there are all kinds of things they can do to try to get to the bottom of that. If it's still unsuccessful, and they wanted to use misrepresentation, which is, I think, what you're suggesting, they would then have to go to their unit manager for concurrence on an A40 finding. They're not done lightly, as I was saying. In that particular fact scenario, I don't really see that as an obvious solution in the case.

I think you're asking whether there are mechanisms for them to overcome it, and yes there are. They could use A25 to overcome that inadmissibility if they thought it was an inadmissibility to begin with.

• (1705)

Mr. Kevin Lamoureux: Just to be clear, an individual abroad who is accused of misrepresentation can appeal to the unit manager as someone who is putting in their application.

Ms. Jillan Sadek: It's not really an appeal, because the application wouldn't be finalized yet. The visa officer would send them their procedural fairness letter saying that they think the person may be inadmissible pursuant to A40, and explaining why. That would give them a chance to reply. If after receiving the client's submission they still thought they were inadmissible, they would then go to the unit manager to concur with an A40 finding before refusing the application. That's sort of internal to the process prior to refusal.

Mr. Kevin Lamoureux: Does this bill deal in any fashion whatsoever with retroactivity? If someone arrived in Canada and then you found out they had said they didn't have any children, but they had a child or they said they weren't married but they were married, would this legislation deal with that in any capacity whatsoever?

Ms. Jillan Sadek: The coming into force for this one is royal assent. There is no transitional period for it, which means that for any inadmissibility finding after coming into force, the five-year rule would apply. Otherwise if they were found to be inadmissible, it would be the two years prior to coming into force. Does that answer your question?

Mr. Kevin Lamoureux: It might not even be just this particular clause. I'm asking if there's anything post landing, if I can put it that way, that would be impacted when misrepresentation was found to have been used. In other words, for whatever reasons they arrived in Canada, nothing was found out.

Ms. Jillan Sadek: Are you talking about the application for permanent residence?

Mr. Kevin Lamoureux: Yes.

Ms. Jillan Sadek: If as a permanent resident you were reported for misrepresentation, it would be the same process as normal, as right now, only the five years would apply once the exclusion order was executed. Instead of a two-year exclusion order, you would get the five-year exclusion order, but there's no other change to the process. Does that help?

The Chair: Thank you.

Ms. Sims.

Ms. Jinny Jogindera Sims: The big leap we're making here today is from two years to five years. What we're trying to do is move forward on a piece of legislation. We're looking for something very specific so that if the misrepresentation was unintentional, the person wouldn't be impacted in the same way.

By the way, when we talk about a move from two to five years, think about what we're really saying to families and how long they're going to be separated. It's not only the five years that they can't reapply, but also the five years after that that they can't apply, and so on, and all the processing time as well.

I want to give you an example and get your input. This is a real case, but I'm not going to mention any names. A person applied to come over here and listed all the places he had worked but forgot to mention a place where he had worked for four months when he was 17. This was discovered, or whatever, and that person was told that he had misrepresented himself because he had not listed all his places of employment.

I dealt with that case. I looked at it and made all the phone calls, as you're supposed to, to get some more background. Even after I got the background information, that was the only sticking point I could find. Then I sat down and decided to see if I, at my ripe old age, could write down all the things I have done since I was 16. I wrote them down. I have a fairly good memory, but then I realized that for two weeks, for two whole weeks, I had a job at a hospital which I had to quit because I was going away. I had totally forgotten about that. I had to be reminded by my husband who happened to find it interesting that I forgot those two weeks of my life. He remembered for some weird reason, and I don't know why. If I were filling out that form, I would have forgotten to include that. It would be a totally innocent omission, not meaning to misrepresent.

That's one scenario.

Then there are these other scenarios, and they are real scenarios as well, involving women who are running away to safety from very dangerous situations, not only politically dangerous situations but also dangerous domestic situations. When they're filling out a form, they may not want to acknowledge that they have a husband because they have this inherent fear that he's going to track them down.

What we're saying in both those cases is that they lied. One was unintentional, a memory lapse; let's call it a senior moment. The second one was a situation we can understand. To me, this piece of legislation goes way over the top.

I also heard that Australia has a period of only three years, right? We didn't look at moving the five years down, though we didn't like the five years, because as long as we can get this exception, then we

felt we could make this work. I'm still hopeful, forever hopeful on this side, Mr. Dykstra, that you will see reason and vote with us.

• (1710)

The Chair: Ms. Sitsabaiesan, go ahead.

Ms. Rathika Sitsabaiesan: I'll be very brief. I just wanted to add that, once again, this is another reasonable amendment. This penalty is actually quite harsh if the infraction was unintentional. We've heard many examples of where mistakes in filling out the forms can be made by anyone.

In my constituency office, I get people coming in all the time, people who have a very good grasp of the English language or the French language. In my constituency, there aren't too many francophones. There are some, but most are English speakers who have a very good grasp of the language but still have difficulty with the form. There may be people who don't have as good a grasp of the language, who may have misunderstood the form and made mistakes in filling it out. There are unintentional mistakes made and difficulties in filling out the form.

We need to be mindful of family members of our constituents who are the ones filling out these forms and maybe making these mistakes.

Also, Jinny mentioned the example of someone filling out the form under some form of duress, and of course, there's the use of a third party agent like the unscrupulous consultants. The amendment actually gives assurances for the honest mistake and protection for individuals from unscrupulous agents. It just seems that judicial review is such a large process. It's such a long and involved process for a possible honest mistake.

I don't have much else to add right now, Mr. Chair.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I want to point out that Mr. Lamoureux's question and answer session with staff was actually a good one. A couple of points I had asked about were reiterated and also one thing further, that this basically boils down to a more significant penalty for those who misrepresent themselves.

While there are always going to be the potential exemptions or exceptions to the rule, those are going to exist whether or not the period is two years or five years. The whole concept behind misrepresentation is that you are fraudulent, that you are attempting to mislead officials and those researching your file into giving you a favourable decision.

If there is an honest mistake made, we've heard from Ms. Sadek that as the individual moves through the process there are all kinds of opportunities for them to present evidence that enforces, reinforces, or corrects what may be interpreted within the application itself. I think we've beat this amendment to death. I think we understand that the point of misrepresentation is going to put the person in a very bad light, so therefore, they should be honest.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: We've heard from people who work with refugees and immigrants, and people seeking visas. People who presented to us, practitioner after practitioner, group after group, expressed these concerns. They felt these concerns to be real. They don't feel they are addressed in the legislation.

I am finding it hard to believe what has changed in the last week, that suddenly almost everything that we're bringing up is either there or isn't needed.

An hon. member: We've been saying that all the way through the process.

Ms. Jinny Jogindera Sims: Yet, witness after witness has said that there are some major flaws in this legislation. All we're trying to do, with the best of intentions, is to mitigate the flaws so we can move forward.

• (1715)

The Chair: Shall amendment NDP-7 carry?

Ms. Jinny Jogindera Sims: I would like a recorded vote.

(Amendment negatived: nays 6; yeas 5)

The Chair: Next is Mr. Lamoureux on LIB-7.

Mr. Kevin Lamoureux: Thank you, Mr. Chair.

First off, if I may, with the unanimous support of the committee, I'd like to change "three years" to read "five years". That was what I had initially meant, but I understand I probably need unanimous support of the committee to do so.

The Chair: Just give me a second.

Mr. Kevin Lamoureux: Where it says "three", it should read "five".

Ms. Jinny Jogindera Sims: Just change his "three" to "five".

The Chair: Proceed, Mr. Lamoureux.

Mr. Kevin Lamoureux: I would assume I had unanimous support there, Mr. Chairperson.

• (1720)

The Chair: I haven't heard any objection, so it's now five.

Mr. Kevin Lamoureux: Okay, thank you.

I move that Bill C-43 in clause 16 be amended by replacing line 39 on page 4 with the following:

"unintentional misrepresentation for a period of two years, or for a period of five years if the misrepresentation is found to be clearly fraudulent,"

I appreciate we have had a fairly lengthy discussion on this issue already, Mr. Chairperson, but I just wanted to use this amendment as an opportunity to distinguish the difference between intentional and unintentional misrepresentation, and that even when you look at unintentional misrepresentation, you could further break it down into two. That is the reason I used the example earlier.

There is unintentional misrepresentation that occurs, for example, with an individual who might say he is coming as a couple with a couple of children, but the father might have had another child outside of wedlock whom he's not prepared to declare for what could be obvious reasons. There could be an individual who comes as part of a family, an older child, now a young adult, who got married, came to Canada. The daughter told mom and dad that just before

they left she had married her boyfriend, or the son had married his girlfriend. The problems and issues surrounding that are quite significant. There are reasons, and as a compassionate society, we need to recognize those types of reasons.

The other example I gave earlier was something I had run into. In that case there was a college of sorts providing a program at what would have been the equivalent to a community facility. An individual took a course at that facility in the 1990s and was given a certificate for taking the course. When filling out the application the individual, being completely honest, submitted the certificate along with many other certificates. Had he not submitted the certificate, he still would have qualified under the package, but because he was told to submit everything, that's what he did. Ultimately it ended up slowing down the process for over two years because they could not locate that facility. I wasn't too sure with regard to what degree common sense was being used. That is why I think it's important.

Mr. Chairperson, I know there are a number of ideas for agenda items going forward for our committee. Number one on the list is the health care cuts for the refugee, and I won't change that. Number two is the provincial nominee. I would suggest to you that number three could be the whole issue of misrepresentation. If we look at the amendments that are being presented, I think there would be a good, healthy debate on that issue. I can tell you that it's not only immigrants or potential immigrants who might fall victim to misrepresentation, but I've also seen government policies that encourage misrepresentation. I would love to have that sort of discussion at the committee level.

Having said that, I trust that we will have a recorded vote on this amendment.

That's it for my comments.

The Chair: My Dykstra, go ahead.

Mr. Rick Dykstra: I have two questions. The first is your request that "Bill C-43 in clause 16 be amended by replacing line 39 on page 4 with the following...".

Page 4, line 39 is actually part of clause 16, so you're replacing part of the introduction. I'm not quite sure what you mean by line 39 and where you want the amendment to be put in. I can't find where it actually fits in. It would end up reading: "16(1) Paragraph 40(2)(a) of the Act is replaced by the following:" and then on that line we would have "unintentional misrepresentation". There is some sort of error as to where the actual amendment goes.

The second problem I have is the actual wording of this. It suggests that if you make unintentional misrepresentation for a period of two years. I just don't understand the amendment. It's not very clear. It actually looks like you want to penalize people who make unintentional misrepresentation.

The Chair: The Chair thinks that your first comment is okay, that Mr. Lamoureux is correct. You can comment on the second one unless someone wants to debate it.

Mr. Kevin Lamoureux: I believe the amendment is in order as to where it applies. It's on page 4 in clause 16.

With respect to your comment on unintentional misrepresentation for a period of two years that recognizes the importance of our seeing that unintentional misrepresentation occurs. This is consistent with what a number of presenters have brought forward to the committee.

Mr. Rick Dykstra: I am still confused by it. Having said that, I am going to go back to my original point. I would like some clarification from one of the analysts or our legal clerk. I would like to know where this new line is going to fit in. I am still not quite sure. In a couple of sentences, tell me what you are trying to say.

Mr. Kevin Lamoureux: There are individuals who unintentionally misrepresent themselves. For those individuals, we should have the discretion to give them two years as opposed to five.

Mr. Rick Dykstra: You might be able to do that in regulation. I don't know that you can do it in legislation. You are asking someone to determine the level of misrepresentation. It either is or isn't misrepresentation. You're saying there would be a sort of bad misrepresentation, where you would only get two years, and then there would be really bad misrepresentation, where you'd get more. To me, you're either being open and honest, or you are trying to misrepresent your position.

•(1725)

Mr. Kevin Lamoureux: Or you open up the process in which regulations would provide a more definitive answer.

Mr. Rick Dykstra: Then your concern is at the regulatory level and not the legislative level.

Mr. Kevin Lamoureux: If you don't allow for the two years, it's going to automatically be five years. What we're doing is allowing for the two years as a possibility.

Mr. Rick Dykstra: You are giving discretion in legislation. You don't give judges discretion in legislation except for minimum sentences. You don't say what they have to give someone. You can say that you have to give them a minimum. I don't know anywhere in legislation where this occurs, unless I'm wrong. I can certainly be proven wrong.

Mr. Kevin Lamoureux: In this legislation, we're saying five years.

Mr. Rick Dykstra: You are saying you want to give discretion to a staff person to say whether it's two years or five years.

Mr. Kevin Lamoureux: No, we're saying the legislation would acknowledge the need to have both two years and five years for misrepresentation. It would be five years where it's clearly fraudulent. The regulations would determine what is unintentional.

Mr. Rick Dykstra: Okay, we're not going to support the amendment. I appreciate understanding it more clearly now. It may have been confusing because of how it was drafted. If someone has committed a misrepresentation, it's fraud, whether it's serious and obvious, or whether it's been a lot more devious in how it's been put into the application process. We won't be supporting the amendment.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: Mr. Chair, I'm glad I heard that exchange. Everything's as clear as mud right now.

I'm having difficulty with this amendment, so therefore I can't support it. I believe it lacks clarity. It also puts in a minimum

sentence, even for people for whom it was totally unintentional. It says that if it was totally not their intention, they must be excluded for a period of two years. It takes away the kind of discretion I was told the officers have right now occasionally. If they were doing it out of fear for their life, or if they just had a senior moment, but it didn't make them a threat to the country or anything and didn't really change any of those things, then I don't see why they would be excluded for two years. That's why I'm finding it difficult to support this.

I could support the second half. Three years is obviously better than five years, but combined, noting that it lacks clarity, it's very difficult to support the current wording. I do want to give my colleague credit for his intentions of what he wanted to do, but I don't feel it's clear to me and it's not as explicit as I would like to see it in wording.

The Chair: Ms. James.

Ms. Roxanne James: Mr. Chair, I would like to go back to the previous amendment, when we talked about what misrepresentation was. It's intentional and it must be significant. Throwing in this whole unintended misrepresentation, I agree with my colleague, Mr. Dykstra, that it's pretty hard to determine if someone did not intend to misrepresent themselves to a degree that it's significant with the intent to mislead.

I agree that the clause is worded strangely, as though if someone accidentally does something incorrectly on the form, they're going to be penalized for two years regardless.

I think the officials of the department here indicated that if someone makes a mistake that is not significant or fraudulently done, there are methods of recourse to resolve that fairly quickly. I don't think that this particular amendment is really necessary. I agree with my colleague on this.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chairperson, this is one of the reasons I think that as a committee we really do need to deal with the issue of misrepresentation. We need to recognize, and that's the reason I asked the question of the staff earlier, that there is misrepresentation that's completely 100% unintentional, and it's important that the staff overseas have the ability to say that it makes sense that it was absolutely unintentional. We'd like to think they're using discretion in order to make sure that this law that we're in the process of passing is not going to actually apply.

I think a vast majority of, if not all, Canadians, would recognize that this sort of misrepresentation does occur, and it's important that there be some form of discretion at our immigration offices around the world.

Then there are other immigrations cases, and I'll use the example of a family of four that comes to Canada. The young daughter or son did not declare that they had eloped with their boyfriend or girlfriend just prior to coming to Canada. The consequences of that are exceptionally significant. If you push the envelope on that, it becomes more significant. This is something we need to recognize does happen. To say that it doesn't happen is to put your head in the sand.

Then you have someone who might put on the form that they don't have a criminal past, but when it is looked into, they have a criminal past. They intentionally tried to deceive the Government of Canada through the immigration offices and the five years would apply. This is what the government is proposing, and we're quite comfortable with that.

We just need to recognize there are different types of misrepresentation that occur. This amendment is a reflection of that fact. That's the reason we're suggesting that it pass.

• (1730)

The Chair: Shall Liberal amendment LIB-7 carry?

Mr. Kevin Lamoureux: Could we have a recorded vote, please.

(Amendment negated: nays 10, yeas 1)

Ms. Jinny Jogindera Sims: Chair, what time are we adjourning today?

The Chair: Any second. I'm trying to squeeze a few more in. Why, have you had enough?

Mr. Rick Dykstra: No. I would ask unanimous consent to extend for an extra five minutes for two reasons. First, I think we can get through clauses 16 and 17, and second, I want to get committee approval for when the minister can come here. I have an offer to make.

The Chair: We have unanimous consent to continue for a few moments.

(Clauses 16 and 17 agreed to on division)

(On clause 18)

The Chair: We are now on clause 18, which has a Liberal amendment. Mr. Dykstra, do you have something else you want to say?

Mr. Rick Dykstra: Thank you, Chair.

I want to acknowledge that over the last few days and the weekend we've tried to come up with a timeframe to have the

minister appear on estimates. I would suggest the following timeframe. I think we have made some excellent progress today, so I'm not sure we need to meet tomorrow. I think we could probably work through this on Wednesday.

Let me propose that from 3:30 p.m. to 4:30 p.m. on Wednesday we meet to continue clause-by-clause review and that from 4:30 p.m. to 5:30 p.m. the minister would attend and make a presentation on estimates. We would have an opportunity to question those estimates and do our due diligence and what we're supposed to do in terms of those responsibilities.

If any remaining clauses are left to work through on Wednesday at 5:30, we would continue to meet from 5:30 until 6:00 or 6:30, whatever might be necessary to conclude clause-by-clause consideration.

The Chair: I don't know whether they are going to agree or not. I'm interested in what is meant by "whatever might be necessary".

Mr. Rick Dykstra: I think at 11:59 they are going forward anyway.

The Chair: So 11:59 is necessary.

Ms. Sims.

Ms. Jinny Jogindera Sims: That is the point I wanted to make. I didn't want a limitation for us to be rushed for our amendments, so as long as it's with the understanding that we're going to go through until midnight, if needed, I think we're okay with that. It is critical that we have the minister and we go over the estimates and do our due diligence.

• (1735)

The Chair: Do we have unanimous consent?

Some hon. members: Agreed.

The Chair: The minister can appear at 4:30 on Wednesday.

This meeting is adjourned.

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