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• (1605)

[English]

The Chair (Mrs. Salma Zahid (Scarborough Centre, Lib.)): Good afternoon, everybody. I call this meeting to order.

Welcome to meeting 67 of the House of Commons Standing Committee on Citizenship and Immigration.

Before we get into our work for today, there is a quick matter for the committee to decide.

On November 15, 2022, the committee adopted a motion ordering the department to provide monthly data on the number of people claiming asylum after entering Canada through non-official points of entry. Now that the committee has presented its report on the asylum seeker study, and given that the data are publicly available online, the department would like to know if it is still the will of the committee to receive these monthly reports.

The members would like to continue receiving the monthly reports...?

Some hon. members: Agreed.

The Chair: Now we will proceed to our clause-by-clause study of Bill S-245.

Mr. Redekopp, go ahead.

Mr. Brad Redekopp (Saskatoon West, CPC): I have a question on scheduling.

As you know, my colleague Tom Kmiec and I have been dealing with this issue of the Indian students who were issued fraudulent college acceptance letters by immigration consultants and who are now facing deportation. I'm sure you've seen that in the motion I have on notice.

I also want you to know that I did a petition on this on Friday. We already have over 4,000 signatures on this, so it's definitely an issue people care about.

I heard through the grapevine that we might be scheduling something on this. I'm curious. I've just heard that we might do a meeting or something on this. Can you advise us as to whether anything like that is happening?

The Chair: Before we get on to any other study, we have legislation before the committee. We have to complete this because we cannot get a further extension. We have already taken that extension. I don't know how many meetings we will have on this.

First and foremost, we have to complete this and get it back to the House. After that, we can proceed into any other business.

Mr. Brad Redekopp: There's no way we can review that issue...? You're not going to allow us to review that issue or talk about it—

The Chair: We don't have time because of the number of meetings we have already had. We already got a 30-day extension and we will not be able to get any further extensions, so we have to complete this before we proceed to anything else.

Ms. Kwan.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you very much, Madam Chair.

Not to belabour this point, but I hope this will give some comfort to committee members and to the public. On the issue of the 700 international students who have been mistreated by bad actors with ghost consultants, I wrote a letter to the minister about that early last week, to call on the government to take action, especially in terms of staying the deportation of these students and finding a permanent pathway for the students, whether that be through an H and C application process or a regularization process.

That's something I am working on actively with the minister's office, and I am hopeful that this will be addressed. That's definitely a big concern for people, and rightfully so.

The Chair: Thank you.

Mr. Dhaliwal, go ahead.

Mr. Sukh Dhaliwal (Surrey—Newton, Lib.): Thank you, Madam Chair.

I would like to thank Mr. Kmiec and Mr. Redekopp for bringing this issue forward. It's a very important issue to the government on this side as well.

As Ms. Kwan is in constant touch with the minister to resolve this matter, so am I on this side. We want to see this matter come forward at some point in time. The reason is that we do not want these bad actors to take advantage of these innocent people time and time again. I'm sure on this side the minister is paying attention to the victims and not to the culprits. That's the plan, and that's what is happening right now. I'm sure that in the coming days we will be able to see better results on this.

As far as my understanding goes, we are talking about not even 700 students. I think at some point in time we can have a briefing from the minister or the parliamentary secretary, who is sitting along with us, to see the number of those affected by this. Every case is at a different level as well in the processing stage. Every case needs to have attention paid to it, because some of them might have already been approved and some of them are in the queue. As far as I see, I don't think it's 700 people. However, even if there's one, it is important that we deal with it.

Madam Chair, you mentioned the bill we are doing right now, the citizenship bill. I ran into Senator Martin today, but I couldn't even say much besides "good morning" because we want to get this bill through this committee so it can get passed in the House, go back through the Senate and get royal assent one day. She's very proud of bringing this forward. We, as committee members, agree as well.

Thank you, Mr. Kmiec and Mr. Redekopp, for bringing this forward.

• (1610)

The Chair: Thank you, Mr. Dhaliwal.

Mr. Redekopp.

Mr. Brad Redekopp: With respect to Mr. Dhaliwal, the only thing I see the minister doing is sending tweets. We need more action than that. I think it's important that we deal with this here at committee as soon as we possibly can.

Ms. Kwan said that she sent a letter to the minister. Would it be possible for you to provide that to us? We haven't seen that, and I would be curious.... We sent a letter that I think was public, so I'd love to see yours as well.

The Chair: Thank you, Mr. Redekopp.

Ms. Kwan.

Ms. Jenny Kwan: Thank you, Madam Chair.

I'm happy to provide that letter to the committee. That letter is on the public record as well, by the way, as it is an open letter to the minister.

Since that time, I have also written a response to the minister's announcement that he is aware of the situation and that they would undertake to target the bad actors and not penalize the students. I have also issued a follow-up letter to the minister with respect to that. I'm happy to table that as well.

In essence, we need action on the staying of the deportation for those students who are impacted and a regularization pathway for permanent resident status or through an H and C application process.

I'd be happy to table those documents for the committee.

The Chair: Thank you.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Chair, I think that this is enough for now. Let's move on to the important bill that we need to get through, as we have a deadline to meet.

The Chair: Thank you.

We will now proceed to Bill S-245.

Today, pursuant to the order of reference of Wednesday, November 16, 2022, the committee will resume consideration of Bill S-245, an act to amend the Citizenship Act, granting citizenship to certain Canadians.

We are continuing our clause-by-clause study of the bill.

(On clause 1)

The Chair: When we left off, we were on clause 1.

Ms. Kwan moved NDP-5. Mrs. Lalonde moved a subamendment, which was adopted. Mrs. Lalonde then moved a second subamendment.

The floor is open for debate on the subamendment.

Mrs. Lalonde.

Mrs. Marie-France Lalonde (Orléans, Lib.): Madam Chair, thank you very much.

Welcome back, everyone. It's nice to see you all. Hopefully we can finish the very important bill that is in front of us.

Very briefly, as an explanation to remind everyone regarding this subamendment that we brought forward, it is to clarify that a child born since 2009 who received automatic citizenship due to the fact that their parents had the substantial connection is deemed to have been a citizen retroactively, from the time of their birth, as opposed to only starting from when the bill comes into force.

Colleagues, this subamendment would also ensure that the new (g.1) category, which is the former section 8, is correctly included, wherever it would be in the amendment, for consistency purposes.

Thank you.

• (1615)

Mr. Brad Redekopp: Okay, so the.... I'm sorry, but I have to get my head back into this from two weeks ago. As you know, it's a very complicated law.

I guess my question would be for the officials.

Thank you for being here again and for being so patient with us.

Could you please give us your assessment of what this is doing?

Ms. Nicole Girard (Director General, Citizenship Policy, Department of Citizenship and Immigration): As was stated by the member, this is a technical amendment that is necessary to ensure that those who are becoming citizens through the provisions of this bill are considered citizens from the time of their birth. That will also be consistent with how lost Canadians were remedied by the previous legislative amendments in 2009 and 2015. Thank you.

Mr. Brad Redekopp: Can you explain this to us? If it isn't done from birth—if it's done from a certain point—what are the implications of that? Why does this need to go back to birth?

Ms. Nicole Girard: Thank you for the question.

The technical amendment is necessary to treat the extending of citizenship in an equitable way, in the same way that was done through previous legislative remedies in 2009 and 2015. If the amendment is not done, then there would be a distinction, as the member mentioned. In that case, citizenship would only be extended from the time that this bill comes into force, if it passes, which means that citizenship would only be applicable for these individuals from that time moving forward.

As to what the impacts would be, there may be some unintended impacts and that's not necessarily desirable.

Other than that, I will ask my colleague from the Department of Justice whether there is anything she may wish to add on that front.

Ms. Erika Schneidereit (Counsel, Legal Services, Department of Citizenship and Immigration): Thank you for the question.

What I would just add, perhaps, is the framing of citizenship in the Citizenship Act currently, in that we have citizenship by grant and citizenship by operation of law. Generally, with citizenship by operation of law, we're recognizing citizenship as a status that was acquired sort of inherent to you as a person, and I think there's something sort of conceptual there as well. That's all I'll add.

Thank you.

Mr. Brad Redekopp: Thank you, Ms. Schneidereit. Is there an issue, though, with acquiring citizenship at a certain age, or is this just to be consistent? I'm struggling to understand why it would matter. What matters in my mind is from now forward, so I'm struggling to understand why the past is important here.

Ms. Erika Schneidereit: On that specific question, I don't think I have anything to add. My colleague has given I think a fulsome response.

Thank you.

The Chair: Next is Mr. Kmiec.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you, Madam Chair.

This is dealing with cases of adoption, so that, for children going all the way back who have been adopted by grant, they would have it by right, which means that if they have children born abroad they would be able to pass on their citizenship. Am I understanding this correctly? This is the effect of the subamendment too—making that wholly within the amendment being proposed.

Ms. Nicole Girard: Madam Chair, just as a point of clarification, this amendment is actually applying to the natural-born, second-generation children born abroad to a Canadian parent. It is not applying to adoptees. The adoptees are dealt with on a separate front in a different amendment.

Thank you.

Mr. Tom Kmiec: Has there ever been a comparative analysis done by the department, then, to examine the citizenship policies and practices of other countries? It just came to me as we're going through this bill and trying to fix up the changes the government made in 2015, in 2009 and back in the 1970s. Has there been an analysis done of the practices of the United States or of other coun-

tries that naturalize a lot of citizens of their own to see how we would compare to others?

• (1620)

Ms. Nicole Girard: The first-generation limit was put in place in 2009, and my recollection is that we did some comparative work at that point in time to establish that, when that change was made, as was previously discussed with this committee, Canada's legislation from that point on would be more in line with the legislation of the U.K., and I believe Australia, which similarly has a first-generation limit.

I think it's fair to say, based on the knowledge of the experts at this table, that Canada's citizenship legislation is broadly in line with what we often term the "like-minded"—Canada, the U.S., the U.K., Australia and New Zealand—where Canada, Australia and the U.K., as I mentioned, now have a first-generation limit, meaning that only those of the first generation born abroad are automatically citizens from birth as of right, as discussed in this committee.

What's a bit unique to Canada is that we're not aware that those other jurisdictions, at least not in recent years, have done these kinds of legislative remedies that are backward looking and restoring citizenship to what we've described as lost Canadians. That is more of a novel approach and remedy that Canada has put in place.

Thank you.

Mr. Tom Kmiec: Could you repeat the last part? What is the "novel" thing that we are doing?

Ms. Nicole Girard: The thing that's novel is that, in 2015 and in 2009, the legislative remedies that Canada put in place for lost Canadians were retroactive in restoring citizenship back to the date of birth, just as this technical amendment is proposing to do, and recognizing those individuals as though they had been citizens all along, as a policy remedy to this gap.

Mr. Tom Kmiec: Typically, when these citizenship act amendments are done in Australia and other jurisdictions, in your experience, does the Canadian legislation follow them or do they follow us? Who is setting the standard for the naturalization of citizens and how our citizenship acts work? Is there a model or jurisdiction that we follow, or are we the model and jurisdiction that other places follow?

When looking at legislation like this—you just said it was novel and something different—are we then setting the standard for these other countries, as legislation goes forward, or is it the reverse? Do we follow them?

Ms. Nicole Girard: In the sense that Canada has taken a novel approach in remedying lost Canadians, I think it would be fair to say it is setting a model for others to consider. There are at least two occasions where I have been invited to international expert fora to speak on this issue for that reason: Legislation that is retroactive tends to be a less frequently taken approach.

It has proven to be a good remedy and a good approach, with a result this committee is aware of. In the past, through these remedies, we've been able to restore citizenship to just under 20,000 persons from those previous legislative initiatives. This amendment under discussion now would similarly look to restore those benefiting retroactively for similar reasons.

Thank you.

Mr. Tom Kmiec: My question is this: If the subamendment passes and the amendment passes—I've asked this question before—how many people would be eligible to regain their citizenship, then?

• (1625)

Ms. Nicole Girard: As I have stated previously in this committee, while we don't have a firm estimate, those benefiting from the legislative remedy to extend citizenship to the second generation and beyond, where the parent meets a connection, could benefit. It's in the order of several thousand persons a year. We estimate the number should be manageable, in recognition—as previously discussed in this committee—that the department already receives in the range of 40,000 to 60,000 applications for proof of citizenship per year, and noting that the member put forward, as well, some numbers in the low thousands, I believe, at the previous hearing.

Thank you.

Mr. Tom Kmiec: Those numbers were from the court case given to us by a former Statistics Canada employee who was hired by, I think, the counsel in that case to produce some numbers. I assume they're all correct for the purposes of that court case.

I was going to ask, then, on the administration of this section, how it's been done in the past.

Is this administered all digitally online now, or is this a role where you have to go to an embassy overseas? I'm wondering whether it's all digital now, or if it's partially paper and, therefore, you need to go to an embassy.

Ms. Nicole Girard: Madam Chair, could the member please repeat the last part of the question?

The Chair: Go ahead, Mr. Kmiec.

Mr. Tom Kmiec: I'm just wondering about the administrative side.

If this passes, becomes law and receives royal assent, how would it work for you to apply to regain your citizenship nowadays? If you believe yourself to be eligible, do you go online and fill out a document digitally in a portal, or is it a digital portal where you download a form, fill it out and then go to a Canadian embassy or a high commission?

I'm wondering what the process to do it looks like nowadays.

Ms. Nicole Girard: Although a number of our applications are now increasingly being made available online and the proof application is available through the website, my understanding is that, at this point in time, the application for proof of citizenship is a paper form. It's currently done on paper. It's sent in to the department for processing. We are making improvements on the processing side all the time.

My colleague reminds me to let the committee know that the applications are available for simpler cases.

Thank you.

Mrs. Marie-France Lalonde: Excuse me. I apologize.

I didn't want to interrupt our great public servant, but I'd like to call a point of order on the relevance, Madam Chair. I understand the questions and how important it is to ask them, but this question has nothing to do with the subamendment I'm bringing forward. I brought clarification even before about the numbers—that this subamendment would not change anything in the numbers.

I just want to make sure, through you, Madam Chair, that we see relevancy to the subamendment in the questions we're asking. It is very legitimate that my esteemed colleague is asking questions to understand the complexity of everything, but I think my colleague is asking about processes that have no bearing on this subamendment.

The Chair: Thank you, Ms. Lalonde.

Mr. Tom Kmiec: I'd like to talk on the same point of order, Madam Chair, when you have a moment.

The Chair: I'll go to Mr. Kmiec and then come back.

Mr. Tom Kmiec: Thank you, Madam Chair.

The reason I ask these more administrative questions is that, when you pass legislation, it has an impact on the civil service and how they administrate. I'm trying to understand what the impact would be of voting yea on the subamendment or nay. I'll then ask the same types of questions on the main question so that I can better understand what the processing times would be like. If you're talking about adding another 20,000 people to the backlog, that will have a material impact. We pass legislation. Civil servants then have to carry out the wishes of legislators of Parliament. It's material to exactly what's going on here. This is a complex piece of legislation. We sometimes have literally the entire alphabet noted in different paragraphs.

I'm not a lawyer. I'm not burdened by a legal education, as I always say, so I think it's valid to ask these types of questions so that we can really understand what the impact will be on civil servants, the people who will spend their entire days having to process applications or to give opinions when there are applications that are maybe right on the line of Parliament's intent. I think it's completely relevant.

But thank you, PMO, for sending that.

• (1630)

The Chair: Thank you for raising your concerns, Mrs. Lalonde and Mr. Kmiec.

Mr. Kmiec, I don't think it was an appropriate comment that you made at the end. These types of things should not be brought here as we go through the legislation and consider clause-by-clause. Let's try to stay on that and focus on that, and let's get this done within our deadline.

Ms. Girard, would you like to comment?

Ms. Nicole Girard: No. I have nothing to add, Madam Chair.

The Chair: Thank you.

Go ahead, Mr. Kmiec.

Mr. Tom Kmiec: Thank you, Madam Chair.

Just to go back, then...or actually, it was pretty much over. I just wanted to understand the impact on the department. You have a process right now. If this subamendment passes, would the amendment...? It's not an impact that you're not unfamiliar with. You have a paper system right now. Is this one of the ones that will be digitized in the future?

My next question was going to be on this. Right now there is a process by which you can try to regain your citizenship, or there will be a process by which you can regain your citizenship, if you can prove you have one parent, being moved to two parents.... All of that will be done in the current.... How long will it take to implement this? Is this an easy change, or is this something that will take perhaps a year or two to implement?

Ms. Nicole Girard: In my experience, having coordinated all the implementation preparations for the 2009 legislative amendments to restore citizenship to lost Canadians, as well as the changes in 2015, I can say with confidence that the preparations generally take a year. You normally have IT changes to facilitate the processing of the new types of cases that the department needs to facilitate. It's using existing processes, as the member mentioned, but still IT changes are required. There are generally always some regulatory changes required. The regulatory process takes a minimum of a year, and the IT changes generally as well.

Many other changes are done in parallel to support those two processes in terms of any changes to policy guidelines, training for officers, communications with members of the public who are benefiting and so on and so forth.

Thank you.

The Chair: Thank you, Ms. Girard.

Mr. Kmiec.

Mr. Tom Kmiec: This is my last one.

Are there dedicated personnel in the department who only handle this? There are so many different immigration streams, but are there dedicated civil service departments that only look at files about regaining citizenship?

Ms. Nicole Girard: There are dedicated personnel in the department who handle citizenship-related applications. Those can include grants, proofs, standard proofs and citizenship being restored-type proofs. Yes, there are dedicated personnel.

The Chair: Go ahead, Mr. Redekopp.

Mr. Brad Redekopp: Thank you, Madam Chair.

I want to ask a follow-up question. When you were talking about other countries, you had mentioned how this was a novel process. There are two questions really. One is maybe more of a curiosity. Do you sometimes work together with other countries? Do you communicate with each other, share best practices and things like that?

My real question is this: Are there any issues if Canada has a different process from other countries, or is it completely irrelevant that way?

Ms. Nicole Girard: There are regular exchanges of information, but we wouldn't work with other countries on changes such as this,

because our responsibility as public servants is loyal implementation. We take that on, and we're well organized to do that.

I wouldn't say that it creates any issues for Canada to have a somewhat different approach. Every country has its issues with which it needs to contend. However, it definitely can be a point of interest for those other countries in terms of the solutions Canada has been able to implement and the ensuing positive results.

I have had occasion to share that internationally with Migration 5 countries, and a much broader group of international citizenship experts who have taken an interest in Canada's legislation and approach on this issue.

• (1635)

The Chair: Thank you, Ms. Girard.

Seeing no further debate, we will go to a vote on the subamendment by Mrs. Lalonde.

(Subamendment agreed to: yeas 7; nays 4 [*See Minutes of Proceedings*])

The Chair: Next, we have NDP-5 as amended.

Mr. Redekopp.

Mr. Brad Redekopp: On this one we had already demonstrated some confusion about whether this involved adoption or not. First of all, I really need to understand what this amendment is trying to do, and then I have more questions.

Could the officials share with me, from their perspective, what this amendment is actually going to do, how it's going to change, what problem it's trying to solve and all of that?

Ms. Nicole Girard: I will briefly summarize. It's not dealing with the circumstance of adoptees. It's dealing with the circumstance of natural-born children born abroad in the second generation or beyond. The first element, in terms of the subamendments, is bringing in a transitional amendment, which is necessary to ensure that for those benefiting, where they may have been granted citizenship at some time in the past because the law wasn't considering them citizens as of right, the grant of citizenship is considered never to have happened. As we discussed at the last hearing, they are considered citizens as of right from their birth. The transitional amendment is necessary to undo the effects of that previous grant, and that is in line with legislative remedies from 2009 and 2015.

The second element is more of a technical provision, ensuring that all of those who are becoming citizens through this provision, because their parents meet a connection test, are considered citizens from their birth and not from the coming into force date of the amendments, should they pass.

Mr. Brad Redekopp: One of the questions I asked was what problem we are trying to solve. I'm still not clear on that.

Ms. Nicole Girard: Madam Chair, these are, as I mentioned before, transitional and technical amendments that are necessary to bring these legislative remedies in line with previous legislative remedies from 2009 and 2015.

They are also to address the issue of equity in treatment for those benefiting from these legislative provisions with those who have benefited from the past legislative amendments from 2009 and 2015, so that those benefiting can be considered to have been citizens from the time of their birth, regardless of whether they were previously granted citizenship. When persons are becoming citizens because their parents meet the connection test, they are also considered citizens from birth and not from the time that the legislation comes into force.

• (1640)

Mr. Brad Redekopp: If I understand, we're not creating a new way to get citizenship here. We're just correcting some inconsistencies and problems from prior legislation.

Ms. Nicole Girard: That is correct.

Mr. Brad Redekopp: This doesn't impact, for example, some of the amendments or things that we've already done so far in this legislation. This is all related to past legislation.

Do I understand that correctly?

Ms. Nicole Girard: Yes, it's bringing the remedies in line with those past legislative remedies. That's correct.

Mr. Brad Redekopp: We had an amendment that put in a test of... I think it was NDP-whatever. It was a previous amendment that we did. Does this affect that one as well, or does it have no impact?

You're going to ask me which one I'm talking about. I think I'm talking about NDP-3 or G-3, maybe. It's NDP-3. That's the one.

Ms. Nicole Girard: Yes, that's correct.

This is a transitional and a technical provision that's necessary to enable the department to properly and smoothly implement NDP-3. That is correct.

Mr. Brad Redekopp: I think I'm good.

The Chair: Seeing no further debate, we will go for a vote on NDP-5 as amended.

(Amendment as amended agreed to: yeas 7; nays 4 [*See Minutes of Proceedings*])

The Chair: Now we're on NDP-6.

Ms. Kwan, would you like to move that?

Ms. Jenny Kwan: Thank you very much, Madam Chair.

NDP-6 deals with what I would loosely term as the "war dead". That is to say they are those who went to war and fought for Canada but were not recognized as Canadians. Many of them died on the battlefield. I thought it was important, symbolically, to recognize them in that sense.

The changes would have no direct effects for Canada whatsoever. That said, I understand that this will not be supported, but it was important for me to put it on the record in any event.

Mr. Brad Redekopp: Going straight to the officials, I'd like to hear your thoughts on this amendment.

Ms. Nicole Girard: Thank you for the question.

Madam Chair, in line with some concerns shared with this committee, with regard to an amendment previously tabled that would have benefited persons who passed away, there are a few concerns for the committee's consideration.

The first being that we cannot estimate the number—the potential thousands of persons—whom this proposed amendment may extend to.

The second, as noted before, is that there's no precedent for this in the sense that, up until this point in time, legislative remedies for lost Canadians have only extended to the living.

That brings us to the third concern shared with the committee before, in that there could be unintended consequences, and it's difficult to know ahead of time what those may be because there's no precedent for this.

One area the department can point to, as previously noted, is the potential for unintended consequences on the citizenship by descent of the persons who would be benefiting from this provision and who are alive today. There is a safety valve clause that the member has mentioned, but we're not convinced, as the department, that the safety valve, in terms of avoiding consequences on the citizenship by descent of the living, is ironclad, so that concern remains.

Those are the four issues for the committee's consideration.

I'll pass it to my colleague from the Department of Justice in case she has anything she wishes to add.

• (1645)

The Chair: Thank you, Ms. Girard.

Ms. Erika Schneider: Madam Chair, I would just reiterate my previous comments from our last session, which is to say that it's open to Parliament to legislate retroactively, but it's inherently complex because you're talking about a law currently applying to facts in the past. It can be difficult to predict the effects of that, particularly in a case where you're looking at facts quite far in the past—80 years.

Thank you.

The Chair: Mr. Redekopp.

Mr. Brad Redekopp: Ms. Girard referred to a... I can't remember the word you used, but it was the clause that you felt was there to try to protect Canada from having unintended consequences, which you felt was not adequate. Which part of the amendment is that?

Ms. Nicole Girard: Madam Chair, if the question was about the previous amendment, which was somewhat similar to this one, I believe it was NDP-4.

Mr. Brad Redekopp: I'm sorry. That's—

The Chair: Ms. Girard, can you please repeat that?

Ms. Nicole Girard: Madam Chair, I understood the question to be about which previous amendment was raising these kinds of concerns, and that was NDP-4.

Thank you.

The Chair: I'm sorry. I think Mr. Redekopp asked something different.

Mr. Brad Redekopp: I'm sorry. I think I confused you.

On this amendment, you mentioned that Ms. Kwan had put a part into this amendment to try to alleviate the unintended consequences on potential future descendants, or things like that. I'm just curious what part of this amendment that was. Does that make sense?

Ms. Nicole Girard: I'm just borrowing the binder from my colleague here. If I read proposed subsection (8.1), it begins that, for any period before the day on which subsection (7.1) first takes effect with respect to a person, "Subsection (7.1) does not have the effect of conferring any rights, powers or privileges—or imposing any obligations, duties or liabilities".

[*Translation*]

Mr. Alexis Brunelle-Duceppe (Lac-Saint-Jean, BQ): I have a point of order, Madam Chair.

The interpreter is asking whether the witness is reading from the act or the amendment, just to make sure they're interpreting the right thing.

Ms. Nicole Girard: I'm reading the amendment.

Mr. Alexis Brunelle-Duceppe: Very good. Thank you.

[*English*]

The Chair: Ms. Girard, go ahead.

Ms. Nicole Girard: I think my reading is complete.

[*Translation*]

Mr. Alexis Brunelle-Duceppe: In that case, Madam Chair, it should be read again for those watching the televised proceedings. They need to hear the interpretation.

[*English*]

Ms. Nicole Girard: I would direct the members to proposed subsections 3(8.2) and 3(8.3).

Proposed subsection 3(8.2) is rather short and refers to "no person has a right to citizenship as a result of any other person being deemed under subsection (7.1) to have been a citizen." Proposed subsection 3(8.3) says that "no action" or other proceedings for damages "may be brought against His Majesty in right of Canada or any officers, employees or agents of His Majesty", and so on.

Thank you.

The Chair: Thank you, Ms. Girard.

Go ahead, Mr. Redekopp.

Mr. Brad Redekopp: Thank you for that.

I'm a little scared because I actually understand what proposed subsections 3(8.2) and 3(8.3) say. They make sense to me. Now, however, you're saying that is probably not good enough from a legal standpoint.

I guess I'm curious about why that wouldn't be sufficient.

● (1650)

Ms. Nicole Girard: I will repeat my observation that a provision like this, while helpful, is not necessarily ironclad and hasn't been tested, so we don't know the result.

Thank you.

Mr. Brad Redekopp: In other words, it might sound good, but until it's been tested in court we don't really know. Lawyers have a way of doing amazing things.

Okay. I think that's it for the moment.

The Chair: Go ahead, Mr. Kmiec.

Mr. Tom Kmiec: Again, I have a comparison point.

Regarding the other countries that naturalize a lot of citizens, such as Australia and the United Kingdom, do they have provisions like this of any sort? I guess the United Kingdom is aside because they have a very similar system. Our problems stem from not having adopted our own citizenship act pre-1947.

In the case of Australia, have they done something similar like this, or have they just carried on with different models of their own citizenship act?

Ms. Nicole Girard: I am not aware that Australia has any such provision. The point of comparison relates to a previous point that my Department of Justice colleague made, which is this: Generally, citizenship legislation provisions apply to the living. This is an amendment dealing with persons who have passed away.

Thank you.

The Chair: Thank you, Ms. Girard.

Seeing no further debate, we will go to a vote on NDP-6.

Go ahead, Mr. Maguire.

Mr. Larry Maguire (Brandon—Souris, CPC): I have a quick question in regard to the timing of this.

This comes up to the original part of it here. Proposed subsection 3(7.1) is to bring it up to date. They weren't citizens when they passed away. If they were alive the day this comes into effect, they would be deemed to have been Canadian citizens right back to birth. That's the correction of it.

I should know this, but what was the time frame of the vacancy, if they were in their twenties at this particular time? Was there a limitation on when they would have been...? Where is the cap involved?

Ms. Nicole Girard: This is dealing with those who passed away sometime between 1867 and 1947. The first Citizenship Act came into force on January 1, 1947. It's dealing with persons who passed away before that time. Had they been alive subsequently, they would have become citizens but for their death.

Thank you.

The Chair: Thank you.

We will go to a vote on NDP-6.

(Amendment negatived: nays 9; yeas 2 [*See Minutes of Proceedings*])

The Chair: Just to let everyone know, NDP-7 cannot be moved because of the fact that NDP-2 was defeated.

With that, we'll now complete clause 1.

Yes, go ahead, Mr. Kmiec.

Mr. Tom Kmiec: Without reviewing, clause 1.1 is a different clause. Is that right?

I'm sorry. I don't have the original piece of legislation. I only have it by amendment.

• (1655)

The Chair: We will be going to the next one, clause 1.1, so—

Mr. Tom Kmiec: That's perfect. Okay. I wanted to make sure.

The Chair: Yes, this is clause 1. We will proceed to clause 1.1 after that.

Is everyone okay?

Mr. Tom Kmiec: I would ask for a recorded division, Madam Chair. Thank you.

The Chair: Okay. We will take a vote on clause 1 as amended.

(Clause 1 as amended agreed to: yeas 7; nays 4)

The Chair: Now we will proceed to the new clause 1.1 in NDP-8.

Ms. Kwan, would you like to move it?

Ms. Jenny Kwan: Thank you very much, Madam Chair.

I actually have a new NDP-8 to move. The new NDP-8 essentially collapses all the subamendments, the three subamendments from the government side, into one. That new NDP-8 is being shared with the clerk for distribution, and I will quickly talk a bit about what it does.

Effectively, NDP-8 ensures that the new connection test is also able to be applied to children adopted from abroad, and it also addresses what happens if the child is born before the death of the parent who must meet the connection test. How this new NDP-8 would differ from the previous one is that it does remove the grandparents component piece, so this is different in the sense that it—

The Chair: Ms. Kwan, just to clarify one thing, is the new NDP-8 you're moving in regard to document reference number 12456799?

Ms. Jenny Kwan: Yes. It's 12456799.

The Chair: Okay. That's good. Thank you. You can proceed.

I have Mr. Redekopp.

Mr. Brad Redekopp: Is this being sent around to us?

The Chair: Yes. That's what I wanted to confirm before it is sent out: which one she is speaking to.

Mr. Brad Redekopp: Okay. Can we maybe pause for a second until we have it?

The Chair: We'll let her read first and then we will.

Ms. Kwan, you can go ahead.

Ms. Jenny Kwan: I'll read this into the record so that people know what I'm talking about.

Essentially, it brings forward all of the changes—I guess this is a better way of saying it—we talked about earlier around the connection test and the application for parents. It applies it to adopted children as well. That's essentially what this does.

The new NDP-8 will read as follows. First, I move that Bill S-245 be amended by adding after line 18 on page 1 the following new clauses:

1.1 Subsection 4(2) of the Act is replaced by the following:

(2) For the purposes of paragraph 3(1)(b), subsection 3(2) and paragraphs 3(3)(a.01) and (c), if a child is born after the death of either of their parents, the child shall be deemed to have been born before the death of that parent.

1.2 (1) Paragraph 5.1(4)(a) of the Act is replaced by the following:

(a) if, at the time of their adoption,

(i) only one of the adoptive parents was a citizen and that parent was a citizen under paragraph 3(1)(b), (c.1), (e), (g), (g.1), (h), (o), (p), (q) or (r), or both of the adoptive parents were citizens under any of those paragraphs, and

(ii) neither of the adoptive parents was a citizen who had a substantial connection with Canada;

(2) Paragraph 5.1(4)(b) of the Act is replaced by the following:

(b) if, at any time, only one of the adoptive parents was a citizen and that parent was a citizen under any of the provisions referred to in subparagraphs 3(3)(b)(i) to (viii), or both of the adoptive parents were citizens under any of those provisions and, at the time of their adoption, neither of the adoptive parents was a citizen who had a substantial connection with Canada."

Effectively, this brings all of the changes that were passed previously on the connection test and this has application for parents of adopted children as well.

In an ideal universe, Madam Chair, I would have liked to have grandparents apply here. I know that is not the will of the majority of the committee. I'm not going to be able to get that through. I have accepted defeat. Therefore, I'm moving this amendment, Madam Chair.

• (1700)

The Chair: Thanks a lot, Ms. Kwan.

Because this has to be distributed to all of the members, I would suggest that we suspend the meeting for a few minutes so that the clerk can do that. Members can have a look and then we'll come back.

The meeting is suspended.

• (1700)

(Pause)

• (1705)

The Chair: I call the meeting to order.

The new NDP-8 has been circulated to all the members. We have new clause 1.1, NDP-8, on the floor.

Mr. Redekopp.

Mr. Brad Redekopp: Thank you, Madam Chair.

I actually have a quick point of order just to say that we have a CPC amendment coming after this one but before NDP-9. I just want to make sure we get the chance to raise that one before we move on to NDP-9, after we're done with this one.

• (1710)

The Chair: We have NDP-8 on the floor. Is there any discussion?

Mr. Redekopp.

Mr. Brad Redekopp: My first question is for the officials.

Tell us your thoughts on the implications of this. Is this worded correctly and are there unintended consequences, etc.?

Before I do that, I just want to say that I think the adoption piece—which is what we're talking about now—is important to all of us. We, on this side, are interested in finding a way to fix this problem that's been in this legislation for a while. It's one thing that all of us have had a lot of contacts, letters, emails and conversations about, so it is something we want to fix.

As always, we want to make sure that it's done correctly, so that we don't create any further unintended consequences.

Please share your thoughts on what's proposed here.

Ms. Nicole Girard: As stated, this amendment is important, for equity, to extend citizenship to international adoptees who are being adopted in the second generation and beyond by a Canadian who is himself or herself a first-generation Canadian born abroad.

The department is also aware of concerns of parents of international adoptees who are looking for a direct route to citizenship such as this one, where a connection test is met as an alternative to going through the immigration process and the sponsorship route, where families are affected by the first-generation limit. This remedy would be beneficial and helpful from that perspective.

There are not any concerns about unintended consequences.

Mr. Brad Redekopp: Thank you.

For our benefit and for the benefit of some of those watching, could you maybe give us an example or two of how this would actually work in practice? Maybe point out where the problems are today and how this would fix that problem with an example or maybe a couple of examples.

Ms. Nicole Girard: The issue today is that, if your parent is born in or naturalized in Canada and chooses to adopt internationally, there is direct access to citizenship. Where the Canadian parent is already first generation and born abroad—so the grandparent was born or naturalized in Canada—parents are affected by the first-generation limit, just as they are when their child is naturally born abroad in the second generation or beyond.

This amendment provides direct access to citizenship in those circumstances where one Canadian parent is able to meet that same connection test, as was previously discussed. It provides an important remedy that's being sought to address those concerns.

Thank you.

Mr. Brad Redekopp: Thank you.

When Ms. Kwan said she had backed away from some things in here—I think she said it was with the grandparents—can you explain a little bit what was originally intended by her as far as the grandparents and what is not happening?

The Chair: Just before we go to Ms. Girard, Mr. Dhaliwal, were you saying something?

Mr. Sukh Dhaliwal: Thank you, Madam Chair.

Madam Chair, this is a very powerful—

The Chair: We have to get a response. Are you...?

Mr. Sukh Dhaliwal: Yes, I'm going to ask a question.

The Chair: Okay. We'll have Ms. Girard first and then we'll come to you.

Ms. Girard.

Ms. Nicole Girard: Madam Chair, if the question is about why grandparents are not included, it's for consistency with the previous amendments and approach with regard to extending citizenship to the natural-born kids of Canadians in the second generation and beyond. For those, it's where the parent meets the connection test.

Here, through this measure, it's making that same avenue available for international adoptees. It would be for consistency where the parent meets the connection test.

• (1715)

The Chair: Go ahead, Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Madam Chair.

My questions for the officials will be about whether this is true today, because this is a very thoughtful vision that Madam Kwan is bringing in. It reads:

For the purposes of paragraph 3(1)(b), subsection 3(2) and paragraphs 3(3)(a.01) and (c), if a child is born after the death of either of their parents, the child shall be deemed to have been born before the death of that parent.

I think this is an excellent addition, Madam Chair, because I have seen cases coming day after day to our constituency office where people have, by marriage, spouses who were citizens here. Their spouses now, because their relationship doesn't exist after death, are not allowed to come in here. In fact, this is important for the children.

I would like to know if that practice is still effective today or not.

Ms. Nicole Girard: I'm sorry, Madam Chair. Could the member repeat the last part of the question?

Mrs. Salma Zahid: Go ahead, Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Madam Chair.

With this amendment that Madam Kwan is trying to bring in, is this not possible today under the act?

Ms. Nicole Girard: That's correct. There is no access to citizenship for international adoptees when it's a case where the second generation was born abroad or beyond.

The Chair: Go ahead, Mr. Dhaliwal.

Mr. Sukh Dhaliwal: I'm fine.

The Chair: Go ahead, Mr. Redekopp.

Mr. Brad Redekopp: Thank you.

That paragraph was the other one I was a bit confused about. Can you explain to me exactly what proposed subsection 4(2) that Mr. Dhaliwal just read is doing?

Ms. Nicole Girard: Madam Chair, I'm going to ask my colleague to speak to that point.

Thank you.

Ms. Allison Bernard (Senior Policy Analyst, Department of Citizenship and Immigration): Thank you, Madam Chair.

This provision you're asking about is specifically related to when a child is deemed to have been born before the death of that parent. It will ensure that someone today who would benefit and get citizenship under this bill if they were born before the death of that parent will be recognized as if the parent were alive at the time of their birth. They will get access to citizenship.

They don't need a living parent at the time they come forward and apply for citizenship. We will look at their parent's substantial connection, even if they are not living at the time when they come forward. This is consistent with previous legislative changes in 2009 and 2015, so that they can use their parent's substantial connection to become a citizen automatically.

The Chair: Thank you, Ms. Bernard.

We have Mr. Redekopp and then Mr. Dhaliwal.

Mr. Brad Redekopp: This is to make sure that I understand.

A parent adopts a child.... I'm sorry. The adoption is in process and then the parents die. Is that the scenario we're talking about?

I'm still a bit confused about exactly how this would apply and who this would apply to. Maybe an example would help. Could you give me an example?

Ms. Allison Bernard: It would apply in that scenario. It's not only for adoptees. It would be the case for natural-born children to Canadians and, as you just mentioned, the example where there is an adoption and the parent dies during the adoption process or something unfortunate like that. It's both instances.

Mr. Brad Redekopp: The reason that it's written this way—"the child shall be deemed to have been born before"—is just to match the wording of the legalese in other cases. Is that a fair assessment?

Ms. Nicole Girard: That's correct.

The Chair: Go ahead, Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Madam Chair.

I'm going to simplify this. I'm trying to get clear in my mind the question that I had.

Today, forget about this Bill S-245. Today, the parents adopt a child. The parents who adopted a child, for some reason, unfortunately die. That relationship does not exist now, and that child would not be able to come.

As I said, there are many spousal cases. They get married and because the spouse dies, that relationship goes away. How would it address those cases?

• (1720)

Ms. Nicole Girard: We just need to clarify the question. Is the member referring to the current state of affairs or under the bill?

Mr. Sukh Dhaliwal: I am referring to the current state of affairs. Today, if that were the case, how would that affect the adopted child? If both parents are citizens and both die, or there's one who was a citizen and dies, what happens to the child who is adopted in the present circumstances?

Ms. Nicole Girard: I'll ask my colleague, Ms. Dewan, to answer.

Ms. Jody Dewan (Senior Policy Analyst, Department of Citizenship and Immigration): If I understand the question correctly, you're asking, if under the current legislation, if a Canadian parent or two Canadian parents seek to adopt a child internationally, and then become deceased prior to the finalization of that adoption...? Under the current legislation, the adoption cannot be finalized since deceased persons cannot adopt children.

Mr. Sukh Dhaliwal: Would it rectify that situation under this bill?

Ms. Jody Dewan: It is my understanding that this bill would not be able to rectify the situation of someone who is deceased and therefore cannot adopt a child. A child cannot be adopted by a deceased person.

Mr. Sukh Dhaliwal: Let me say the adoption goes through and the eligibility for adoption passes. There are many other formalities that happen. We have seen many cases, such as the spousal case. The eligibility of the spousal case goes through, but the spouse does not get a visa. The sponsoring spouse from Canada then dies, so the sponsored person, even though the eligibility has passed, would not be able to come. In that particular instance, if the adoption was clear, but the child was not in Canada, would that rectify that situation?

Ms. Jody Dewan: As I understand it, in order for an international adoption to be finalized, there has to be a genuine established parent-child relationship. If children then receive citizenship, it is because they have a Canadian parent who is either in the first generation and meets the substantial connection requirement, or the parent is already a Canadian citizen who is able to pass on citizenship. If the parent then dies following the adoption, that does not sever the adoption. The adoption would stand. The child's citizenship would stand.

The Chair: Thank you, Ms. Dewan, and thank you, Mr. Dhaliwal.

Next, we have Mr. Maguire.

Mr. Larry Maguire: Thank you, Madam Chair.

I wish to thank my colleague, Mr. Dhaliwal, for the questions he was asking. It follows up a bit with my colleague, Mr. Redekopp, as well, with regard to the timing.

I follow exactly what you're saying, Ms. Dewan. You are going to have to have one or both parents at least alive or that adoption isn't going to take place, even though it might have been in the process. I'm going back to what I was asking in the earlier question regarding the other clause we had today.

Is there any impact on the period of time we're talking about? What years does this take place in, or is it any time previous to where we're at today?

• (1725)

Ms. Nicole Girard: This would be similar to the natural-born children who are benefiting from the connection test, where the Canadian parent needs a connection test. This is similarly benefiting international adoptees since 2009, from the time the first-generation limit was put in place in 2009.

The Chair: Thank you, Mr. Maguire.

Mr. Kmiec.

Mr. Tom Kmiec: Thank you.

Mr. Redekopp wanted to ask something before I went, because it was a follow-up.

Mr. Brad Redekopp: Thanks to Mr. Dhaliwal for asking that question, because that was part of my original confusion on this.

I was under the impression that.... This is on the question of an adoption and the parents die. In this proposed subsection 4(2), we're talking about an unborn child whose parents die. That child obviously comes into the world and has to have citizenship. That's the case, from what I understand.

However, what you're saying is that, in the same sense, if an adoption is in process but the parents die, the adoption does not continue on. It's different from the case of a birth. Am I understanding that correctly?

Ms. Nicole Girard: I'll ask my colleague to speak to that, Madam Chair.

Ms. Jody Dewan: Yes, I believe that your understanding is correct. Although I believe every attempt is being made to equalize the treatment of the natural-born children of Canadian citizens abroad and the internationally adopted children by Canadian citizens abroad, the mechanisms are slightly different. The circumstances are slightly different. As a result, there are going to be some differences in how the legislation needs to apply to different circumstances. Thank you.

Mr. Brad Redekopp: Is this creating an unintended consequence, or is it just a difference that needs to be dealt with? Is this the correct way to deal with this?

Ms. Nicole Girard: I would repeat that there are not any unintended consequences from the perspectives of the experts at this table.

This is an amendment that is an equity measure that is necessary to extend citizenship to international adoptees of a Canadian parent

in the second generation and beyond, just like the natural-born children who have been discussed before.

There's nothing further to add, Madam Chair. Thank you.

Mr. Brad Redekopp: I understand, but is that not creating an inequity? If you're pregnant and you're bringing a child into this world, that child will become a citizen should you die. If you're doing the exact same process but through adoption, you're trying to bring a child into this world, so to speak, and you die, then that child is never going to be a Canadian and they're going to end up back where they started.

Is that not an inequity?

Ms. Nicole Girard: The proposed amendment is seeking to minimize differences between the natural-born children and adopted children of a Canadian parent as much as is legally possible. It's not creating new distinctions.

However, there will be a big distinction and a big inequity should this amendment not go forward to equalize things, as much as is possible legally, between the natural-born and adopted children of a Canadian parent. Thank you.

Mr. Brad Redekopp: First of all, there is a bit of an inequity here. Would you agree that if it's a natural-born child versus a child going through adoption, the outcome is different?

However small or big you want to classify it, that is an inequity. Is that a fair statement?

Ms. Nicole Girard: I'm not stating that there is an inequity, for the record. What I'm saying is that this amendment is necessary in order to create equity, as much as is possible, between the adopted child of a Canadian and a natural-born child of a Canadian, so that in both circumstances there can be access to the connection test.

So far in this bill, we've only dealt with the natural-born children of Canadians. Thank you.

• (1730)

Mr. Brad Redekopp: Is there a legal way to complete that equity where an adopted child whose parents die in the process could still become a Canadian citizen? Is there a legal way to do that?

Ms. Nicole Girard: We believe that the proposed amendment is doing that, insofar as it's possible, while still respecting a number of obligations that Canada has when international adoptions come into play to ensure that the proper diligence and safeguards are in place. Those include the element that the adoption has to be in the best interests of the child. Second, as my colleague mentioned, the adoption has to create a genuine parent-child relationship, and, third, the adoption has to be in accordance with the laws of in place in the adopting country and the country of residence. Thank you.

Mr. Brad Redekopp: Are you saying, then, that if the child is in the process of being adopted and the parents die, according to the rules of other countries, that adoption could not continue?

Is that what you were saying in those words, or is it something that we...? Could we just change the legislation to say that adoption can proceed and then the normal course of action happens as if the parents had died in the same equitable way?

Ms. Jody Dewan: I believe that because Canada is party to a number of international instruments with relation to international adoptions that are designed to protect the welfare of children, and as my colleague mentioned, those three primary pieces—the genuine parent-child relationship, etc.—it is not possible for there to be a genuine parent-child relationship in cases where there is no parent. In those cases, the adoption would not be able to proceed and as such, the adoption would not meet the legal requirements under Canadian legislation or the international agreements to be able to proceed.

It is not a case that Canada is acquiescing to other countries' requirements. These are requirements that are built into Canadian legislation to protect the well-being of children being adopted internationally.

Mr. Brad Redekopp: Okay, I think I understand. I get what you're saying. You're taking this as far as you possibly can without crossing that line you described, Ms. Dewan. Is that fair?

Ms. Nicole Girard: That's correct.

Mr. Brad Redekopp: Okay.

The Chair: Go ahead, Mr. Kmiec.

Mr. Tom Kmiec: Thank you, Madam Chair.

To go to this new NDP-8 amendment—

The Chair: I'm sorry to interrupt. The bells are ringing. A vote has been called.

Do I have unanimous consent to continue?

An hon. member: No.

The Chair: The bells are 30 minutes. We have resources available until six o'clock, so we will not be able to come back. The meeting will have to be adjourned.

Mrs. Marie-France Lalonde: Is it a quorum call, maybe? Should we ask what it is?

An hon. member: It has to be unanimous....

The Chair: I will just check. It could be a quorum call.

It's 30-minute bells. It's a dilatory motion that a member be now heard.

Thanks to the officials. Thanks for your patience and for coming back again.

The meeting is adjourned.

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