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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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● (1530)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon. Welcome.

This is meeting number 34 of the Standing Committee on Public Safety and National Security, on Wednesday, October 20, 2010.

Just before we go to Ms. Mourani, I want to say that today we are here to begin our study on Bill C-5, An Act to amend the International Transfer of Offenders Act. I'll introduce our witnesses in a moment.

As far as a little bit of business for our committee is concerned, it's been passed on to me from the clerk that we would like to establish a date by which all witnesses could appear on Bill C-5. By the end of today's meeting, we will have heard from the department, so on November 17 we would begin again on Bill C-5.

In the opinion of the chair, the clerk, and a few others, it's very important that you submit your lists of witnesses on Bill C-5 if you have any. Hopefully by November 17 we would be able to hear some witnesses in the first hour, and perhaps even consider clause-by-clause, depending on how many witnesses we have. If we feel we are going to need some more time, that's one thing, but please get your witnesses in.

Now, Ms. Mourani, do you have a point of order or what?

[*Translation*]

Mrs. Maria Mourani (Ahuntsic, BQ): No, Mr. Chair. I just want to make a comment before we go to the witnesses. I received some disturbing news today. One of the witnesses, whose name I gave to the clerk, has refused to appear before the committee for the scheduled hearings on the G20.

The witness in question is responsible for Ontario's Correctional Services. We submitted his name and contact information. According to the clerk—Mr. Préfontaine can correct me if I'm wrong—this gentleman is refusing to come and testify. I'm wondering if the committee can subpoena him to testify. Much of the testimony that we will hear will centre on Ontario's two provincial detention centres.

[*English*]

The Chair: All right.

Do you want to speak to this...?

I have a good idea, but I'm not a hundred per cent certain to whom you are referring. Generally speaking—

[*Translation*]

Mrs. Maria Mourani: Mr. Préfontaine could give you his name.

[*English*]

The Chair: This is in regard to another study. What we will do is attempt to do that again and we will explain to him the importance of attending. It may have been the date, or it may have been another issue, but we will explain to him that if he is unavailable on that day, we will expect him on another day. If we get another refusal on that, then we'll come back and go through it, but—

[*Translation*]

Mrs. Maria Mourani: If that is the case..., I mean...

[*English*]

The Chair: That means to give us a little time on this, because this is the first that I have even heard that he was unable to attend. As these things go, I'm not sure of his reason for not attending, but if I have to, I would talk to him as well, find out what the reason would be, and see if we can get another date.

All right? We'll follow this up. I will follow it up.

● (1535)

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): If I may, Mr. Chair—

The Chair: Go ahead.

Mrs. Alexandra Mendes: —I think this is not a question of his not being able to attend but of refusing to attend.

Mrs. Maria Mourani: *C'est ça*.

Mrs. Alexandra Mendes: That's the difference. If it's that, can we give you the recommendation that you subpoena him if he continues to refuse...?

The Chair: Well, we'll try him again. We'll discuss at a later—

[*Translation*]

Mrs. Maria Mourani: Mr. Chair, I understood Mr. Préfontaine to say, based on information received from a third party—and Mr. Préfontaine could confirm this today—that the gentleman didn't say he couldn't come because of a scheduling conflict. In fact, Mr. Préfontaine gave him five dates to choose from. The gentleman said he didn't want to come and testify. He is flatly refusing to come and hasn't given us any explanation for his position. This is very serious, Mr. Chair.

I'd like this gentleman to be subpoenaed, to be compelled to testify before the committee. Much of the testimony will focus on the conditions in the two provincial jails, that is the one for female inmates and the one for male inmates. One way or another, this person is going to testify. You can be sure about that!

[*English*]

The Chair: Go ahead, Mr. Holland.

[*Translation*]

Mr. Mark Holland (Ajax—Pickering, Lib.): There is another option before actually issuing a subpoena. The gentleman can be informed that if he refuses to testify, the committee will undoubtedly have him subpoenaed, that he has a choice to come voluntarily and if he doesn't he will be subpoenaed. If the situation is explained to him this way, surely he will make the right choice.

Mrs. Maria Mourani: Can Mr. Préfontaine tell us exactly...?

[*English*]

The Chair: Go ahead, Mr. Préfontaine.

[*Translation*]

The Clerk of the Committee (Mr. Roger Préfontaine): Mrs. Mourani, I issued an invitation to Mr. Small, the Assistant Deputy Minister, Adult Correctional Institutions for Ontario's Ministry of Community Safety and Correctional Services. Early this afternoon, someone in his office called me to say that Mr. Small was declining the invitation. That's all.

Mrs. Maria Mourani: I see. Then a subpoena is in order, Mr. Chair! We have five days and not much time to waste. The gentleman must testify! Therefore, I'd like him to be subpoenaed.

[*English*]

The Chair: Did I know about this before?

The Clerk: No.

The Chair: Then how did they know about it?

The Clerk: Because I informed Madame Mourani's office that one of their witnesses was declining. That's why.

The Chair: Okay. I can follow this up again. I was unaware of this. We will follow this up again and perhaps at the next meeting discuss where we want to go from there, but I would like to explain it to him and see what his response is.

Go ahead, Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): Mr. Chairman, on a similar note, this committee published a calendar in which we all agreed as a committee to have one day to explore the Fadden issue. We had two witnesses scheduled for that. I understand that you can't subpoena a cabinet minister or member of Parliament, but you can subpoena—and we ought to subpoena—Madame Morin.

I want to express publicly here how disappointed I was yesterday that as a vice-chair of this committee I found out through the media that the minister was not appearing and that Madame Morin was not appearing.

When we left the last meeting, it was you, Mr. Chairman, and Mr. MacKenzie as the ranking Conservative, who said you would be checking with the minister and checking on dates. Nobody had the courtesy to this committee to even let me know that wasn't happening until a media release went out saying that the minister refused to appear.

An hon. member: I have a point of order.

Mr. Don Davies: This is a point of order that I'm raising right now.

The Chair: You can't do a point of order on a point of order.

Mr. Don Davies: Mr. Chairman, the day that we were to study the Fadden issue was not merely limited to two witnesses. It was a topic as well. We have to find another day. This day can't just disappear while we replace it with Bill C-5. That calendar schedule was agreed to by this committee. We all made compromises—

● (1540)

The Chair: Well, on that point—

Mr. Don Davies: Can I just finish my point, Mr. Chairman? I have a right to finish my point.

There were compromises made back and forth where we all got our issues; it's not fair to have one issue just evaporate.

I also want to say that you should also talk to Madame Morin, who is not a cabinet minister and who can be subpoenaed. She is not entitled to refuse to come, which is what it appears from the media that she appeared to do. She didn't say she couldn't come; she is refusing to come. That's not acceptable.

The Chair: Mr. Davies, you will have the opportunity to ask her that question on Monday. My understanding is that she will be here on Monday.

An hon. member: Mr. Chair?

The Chair: He has another point of order.

Yours wasn't a point of order, was it? It usually is a point of order.

Mr. Mark Holland: Well, I can make it one.

The Chair: Thank you.

Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): I would like to remind Mr. Davies that the issues he's discussing were discussed in an in camera meeting. To my knowledge, we're not in an in camera meeting right now.

I'm wondering, Chair, if it's appropriate that he express his regrets in speaking about business publicly, as he has for the last minute or so, in this environment.

Mr. Don Davies: Mr. Chairman, I'm talking about the calendar that has been published. It's a matter of public record that this day is scheduled to hear from certain ministers—

Mr. Phil McColeman: Sir—

Mr. Don Davies: There's nothing privileged—

Mr. Phil McColeman: Mr. Chair?

Mr. Don Davies: —about that whatsoever.

Mr. Phil McColeman: Mr. Chair?

The Chair: I'm just checking on that right now.

Mr. Phil McColeman: He's talking about what was said in the meeting.

Mr. Don Davies: No, I'm not.

Mr. Phil McColeman: Yes, you are.

Mr. Don Davies: No, I'm not.

Mr. Phil McColeman: You just did.

The Chair: No. He's making reference to the schedule, all right?

Mr. Don Davies: It was clearly agreed to.

The Chair: The schedule is reflected in the—

Go ahead.

The Clerk: The schedule is reflected in the minutes of proceedings of the committee. The committee agreed to dates and to subject matters for particular dates and that's reflected in the minutes of proceedings. The minutes are public.

Mr. Phil McColeman: So that I'm clear, then, he can discuss the content of the in camera discussion, which was what he was doing—

A voice: No—

Mr. Phil McColeman: —with the parliamentary secretary and the chair being talked about—

Mr. Don Davies: On a point of order, I'd like Mr. McColeman to specify what I said, what I revealed, that was privileged. What statement was it?

Mr. Phil McColeman: It was privileged about the fact of what we had discussed.

Mr. Don Davies: What?

Mr. Phil McColeman: I'm not going to repeat it because we're not in camera.

Mr. Don Davies: Well, you're making an allegation that—

Mr. Phil McColeman: I'd be happy to do it in camera.

The Chair: Order, order. I'll tell you what I'm going to do. I'm going to go back and look at the blues, and see exactly what Mr. Davies said, all right? Then I'm going to cross-reference that with the minutes.

We'll cross-reference it with the minutes. If anything was disclosed that is not disclosed in the minutes, then we'll come to Mr. Davies again. All right?

Mr. Holland.

Mr. Mark Holland: Mr. Chair, similarly with respect to the calendar, I have a grave concern with the national security adviser stating that she's not going to be available on this issue. I would advise, if I could, the same that we did with the prior witness, which is that she will have two choices: either come voluntarily or by subpoena.

I would further state that we have a motion that we're going to be putting in with respect to the Fadden matter. Given the fact that we now only have one hour of witnesses because the minister refuses to hear from us, what I'd like to see is for us to have an opportunity to deal with that motion regarding this issue—

The Chair: On a point of order, Madame Mourani.

[*Translation*]

Mrs. Maria Mourani: Mr. Chair, may I simply remind you that I made my request before my colleague Mr. Holland made his. I'd like us to finish up with this business and to deal with the fact that Mr. Small refuses to come here and testify at the hearings on the G8 and G20 which are scheduled to begin on Monday.

I'd like to move that this gentleman be subpoenaed to appear before the committee.

[*English*]

The Chair: That's not a point.... This is just different from Mr. Holland's.

[*Translation*]

Mrs. Maria Mourani: No, we were already in the middle of debating something, Mr. Chair, hence my point of order.

[*English*]

The Chair: We'll come back to what we're going to do with Mr. Small.

Mrs. Maria Mourani: Okay.

Mr. Mark Holland: My suggestion for what we could do is.... Because we have two witnesses that have declined the invitation of the committee, I have suggested that there are two options on how you handle them, and they're both the same.

One is to make a phone call to the witnesses and advise them that they can come voluntarily or they will be subpoenaed. I think that's being very generous to them. That gives them the opportunity of appearing before committee without being forced and being dragged kicking and screaming to the table.

I think if they know that a subpoena is coming, they'd be pretty likely to say yes and to reconsider. But I'm amenable as well, if Madame Mourani would prefer, to just jump directly to a subpoena for both of these witnesses. I'm also amenable to that, but let me just say that for the meeting we are going to have with respect to matters arising from statements by Mr. Fadden, given now that we only have a witness—because we can't force the minister to appear before the committee and he has refused—I would suggest that in the second hour we have an opportunity to debate a motion that I'll be working on and submitting.

That way, we can have that second hour being productive and continuing to be used for the purpose the committee originally intended. I'll be giving notice of that motion and will of course submit it well in advance of the 48 hours.

● (1545)

The Chair: Any motion today for a subpoena is not going to work because no motion has been submitted with 48 hours' notice. We aren't going to entertain that motion. That's not coming out of what we're discussing today on Bill C-5, plain and simple.

Second, it is common courtesy that in a case like this where they deny.... It has happened before that witnesses have said, “No, I can't make it”. We've said, “Okay, that witness is unavailable”. Then other witnesses have come forward. I think that's why the clerk notified you that they would not come: because they were your witness.

If it's the wish of the committee that he must appear here, then he needs to have that explained first. That's just common courtesy. I would call him and explain that the committee is still very much intent on his appearing before our committee, and that if he chooses not to, we may go the route of a subpoena. If we subpoenaed everybody who said they were not coming to committee, we would be giving subpoenas to hundreds of people, because many people do not want to appear. We get 30 or 40 witnesses on some issues. Every year in Parliament, before all the committees, there are hundreds who choose not to come. On occasion, one may be subpoenaed.

Mr. Holland.

Mr. Mark Holland: As much as I find it impossible that anybody wouldn't want to appear before this committee, what I would suggest, then—

The Chair: We actually have two here who want to appear.

Voices: Oh, oh!

Mr. Mark Holland: Right, and I'm aware of that; I'm anxious to hear from them as well.

But given the fact that we weren't planning on dealing with this today, I think it's important that we rectify these outstanding matters. What I will do is give you a notice of a subpoena motion for these two witnesses. That way, it's on notice should they decide not to come voluntarily. I think that allows the clerk to say that the committee feels very strongly about their attendance and feels that it's imperative. That allows the clerk to advise them that should they make the decision not to appear, the committee will be considering a motion to subpoena them.

The Chair: All right. I will make mention of that. Again, you must file the motion.

Madame Mourani.

Mr. Mark Holland: I'm giving notice, and the wording of the motion is that the committee subpoena these two individuals. That's notice and wording.

The Chair: Madame Mourani.

[*Translation*]

Mrs. Maria Mourani: Mr. Chair, you just said that we cannot move any motions today. Therefore, you should know that I intend to give notice of motion to address the situation with Mr. Small and Ms. Morin. I will follow Mr. Holland's lead.

I do not have a problem with your calling these two individuals and attempting perhaps to convince them to appear. I'm sure that you can be quite convincing. WIth all due respect, I don't have a problem with that. However, should these persons turn down our invitation, then we will give notice of motion to compel them to appear.

You mentioned that it is impossible for some witnesses to come and testify and that we are used to this. I can understand why Joe Blow might not be interested in appearing before a committee. However, public office holders have a duty not only to act in a transparent manner, but also to answer to the people for their actions.

I think these individuals have a duty to testify before the committee about what happened during the G20 and about why a number of Quebeckers and Canadians were detained. The committee isn't asking to hear from Joe Blow. It wants to hear from people entrusted with very important responsibilities.

I agree with your decision to contact them. I'm a very courteous person and I'm very pleased to see that you will be calling them, but we still intend to give notice of motion.

[*English*]

The Chair: Thank you very much for that.

Now, seeing no other hands in the air—and not encouraging any to go there—I will have us continue.

Today we are going to proceed with our study of Bill C-5, An Act to amend the International Transfer of Offenders Act. As our witnesses today, we have, from the Department of Public Safety and Emergency Preparedness, Ms. Mary Campbell, director general of the corrections and criminal justice directorate.

Welcome. We have had the privilege of having you at our committee before.

We also have with us Michel Laprade, senior counsel, legal services.

Welcome.

We look forward to your comments.

● (1550)

Ms. Mary Campbell (Director General, Corrections and Criminal Justice Directorate, Department of Public Safety and Emergency Preparedness): Thank you very much, Mr. Chair.

I am completely delighted to be here. I always am.

I did provide some written remarks, and I will go through those, but obviously we want to allow sufficient time for questions about this bill.

I will just clarify the roles. As you have indicated, Mr. Chair, I am with the Department of Public Safety, so my responsibility is with relation to the act itself and the negotiation of treaties. The treaty negotiation is done in concert with the Department of Foreign Affairs and International Trade.

The actual processing of transfer applications and the transfer of the people is done by the Correctional Service of Canada, but clearly we work very closely together. CSC officials were not able to be here today, but my colleague Michel Laprade, who is in legal services with the Correctional Service of Canada, is a long-time expert on international transfer matters. It may be that because of a lack of an operational person we'll have to get back to you with some answers, but I'll certainly do my best.

The current act, the ITOA, as we call it, was enacted in 2004. It replaced the original Transfer of Offenders Act, which was created in 1978. Canada was actually a world leader in the creation of international transfer agreements.

Since 1978, a number of multilateral and bilateral treaties and arrangements have been developed. We have multilateral treaties, including, for example, the Council of Europe Convention on the Transfer of Sentenced Persons, to which Canada is a party; the Commonwealth Scheme for the Transfer of Convicted Offenders; and the Inter-American Convention on Serving Criminal Sentences Abroad. These allow transfers with a wide variety of countries, such as Japan, Costa Rica, and the U.K.

In addition, we have bilateral treaties: treaties that Canada has negotiated directly with specific other countries, countries such as Mexico, Venezuela, and the United States. In total, we have transfer mechanisms with 82 other countries.

The legislative purpose of the ITOA, which is under the authority of the Minister of Public Safety, is as follows: “To contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals”.

This domestic statement of purpose mirrors what is in the international conventions and treaties, so we don't operate in isolation in devising our scheme, but rather in concert with other countries around the world.

For example, Canadian requirements for transfer are what you would see in many of these other treaties. These are things, for example, like the requirement that all three parties consent to a transfer, which is to say the offender, the sentencing country, and the receiving country. All three must consent. That's a fundamental principle.

Another fundamental principle is dual criminality, which is to say that if a Canadian is incarcerated abroad and wants to come back to Canada, the offence has to be one that is also an offence in Canada. It doesn't have to be identical, but if it's an offence in a foreign country and it's not behaviour that we recognize as a crime, the person is not eligible to come back to Canada.

I would say that generally the international program works very well. Certainly there have been some countries—and this is particularly the case in Europe—where the number of foreign offenders in prisons has really skyrocketed. In some jurisdictions, I'm told, half the inmate population is comprised of foreign offenders. So for a number of countries that are stretched by limited resources, having a mechanism like international transfers allows them to more effectively manage their domestic population, if you like, and return foreign offenders to their home countries.

Canada is certainly particularly active in the Council of Europe Convention on the Transfer of Sentenced Persons. I've had the privilege myself of attending council meetings in Strasbourg a number of times to discuss mutual problems and resolve issues. The dialogue is ongoing. Events are always changing.

● (1555)

As well, Foreign Affairs personnel have been very involved in those discussions and in transfer matters. I really must say that they've been exceptional partners. The consular officers who visit Canadians abroad have really done an outstanding job.

I have a few numbers, and we certainly have more statistics if the committee is interested. Since the program started in 1978, there have been 1,557 Canadian offenders transferred back to Canada, while Canada has returned 127 foreign nationals to their home countries. About 85% of the 127 transferred out have been to America. The United States is our biggest partner. I think the reasons are obvious, given the border between us.

There are about 2,000 Canadians incarcerated abroad at any given time. In terms of the number of applications per year, the Correctional Service receives about 264 new applications every year. They have a carry-forward of about 308 applications from previous years, resulting in a total caseload of about 572 files per year.

Now, there are Canadians incarcerated abroad who obviously choose not to return to Canada under a transfer, so of those 2,000 Canadians abroad, clearly a large number are choosing to not request a transfer. If the offender does not come back under a transfer, of course, usually they will be deported at some point during the sentence or at the end of the sentence. They will likely come back to Canada if that's their only country of citizenship, or they may continue on to any country where they are admissible.

The problem faced by many Canadians abroad, of course, is that local conditions may be very different from what they are used to in Canada. There are language barriers. There are cultural issues, dietary issues, and medical issues, and of course, there is distance from friends and family in Canada.

I also want to highlight that there are public safety reasons for transfers to their home country. If people come back to Canada under sentence, they will come back under the control and supervision of the Correctional Service of Canada and the Parole Board of Canada. As a result, they will be able to have access to programs here. If a Canadian remains abroad, often he or she doesn't have any access to programs in foreign prisons. As well, a foreign conviction will be recorded in the RCMP's database of convictions. If the person comes back free and clear, that conviction is not registered in the RCMP database.

As I said, the legislation was amended in 2004, and the government is now proceeding with Bill C-5, with some further amendments.

Under the current legislation, the minister has to take several factors into account when considering a request for a transfer to Canada. I won't read out all of these. They are in the current act. They include whether the offender's return to Canada would constitute a threat to the security of Canada and whether the offender still has family or social ties in Canada. There are four factors listed.

These are all quite important things to consider, but the ITOA as it is now does not make any specific mention of protecting the safety and security of Canadians, nor does it specifically mention victims, family members, or children. The government views these as serious omissions, which is why it is proposing a number of amendments to the decision-making factors as well as to the purpose of the act.

In addition, we've had a number of cases that have been reviewed in Federal Court, and obviously they have been instructive as well. It's viewed as important that the factors be elaborated even more clearly in the legislation. The factors will provide the minister with more flexibility and a more comprehensive decision-making framework within which to consider applications. They'll ensure that Canadians who request transfers are treated fairly and equitably while not eluding accountability for the offences they have committed abroad.

● (1600)

I'll go through the proposed amendments. The first one is to the purpose of the act. The amendment would specifically reference public safety as a purpose.

The second amendment is enshrining in law a number of additional factors that the minister could consider in deciding whether to transfer a Canadian back. Again, it's a list that is in the bill, so I won't go through it exhaustively, but it includes issues such as whether the offender would endanger public safety in Canada; whether the offender is likely to engage in criminal activity if returned to Canada; whether the offender has participated in programs abroad; whether the offender has accepted responsibility for his or her actions abroad; the extent of the offender's co-operation with law enforcement authorities in the foreign jurisdiction; and last, any other factor the minister considers relevant.

In terms of how this would work in practice, for example, if an offender were considered to pose a threat to a family member, the minister could take that into account in weighing all of the factors before making a decision. Similarly, if the offender has cooperated with law enforcement, if they are in poor health, if they have acknowledged responsibility through, for example, a guilty plea or other cooperation with authorities, the minister could take those factors into account. As it stands now, the minister has a residual discretion that has been recognized by the courts, as long as it is exercised in a manner consistent with the purpose of the act, so it's not completely wide open. The intention of these amendments is to more clearly articulate in statute what those additional considerations could be.

That's a quick summary of what is in the bill. As I said, I'd be happy to answer any questions, as would my colleague, Mr. Laprade.

The Chair: Thank you very much, Ms. Campbell.

We'll move to the first round of seven minutes, with Mr. Holland.

Mr. Mark Holland: Thank you very much, Mr. Chair.

I thank the witnesses for appearing on very short notice and also for waiting at the beginning of the meeting for us to get started.

I have to say at the outset that I think this is a terrible bill and I really have to be convinced otherwise.

You started at the beginning of your presentation by giving a very strong explanation for why we need the international transfer of offenders and how it has served an important public safety function. One of the concerns I have is with this notion that we should give the minister carte blanche, that however the minister wakes up and feels in the morning, he should be able to do whatever he wants regarding an international transfer of an offender. That's aside from the fact that it's quite arbitrary, because it's now entirely in the minister's hands.

The second problem I have is that these people—and correct me if I'm wrong—are coming back to Canada. The question is, are they coming to a Canadian prison, serving a Canadian sentence, being rehabilitated in a Canadian jail, and, when they come out, having a Canadian record? Or are they spending their time in a foreign jail, potentially with no rehabilitation, potentially in much worse situations, and then after a time in a federal prison, being deported back to Canada, much more dangerous than they were before?

I'm trying to understand how something that has been successful, that has been an important tool of public safety, is enhanced by giving the minister very arbitrary powers to make decisions for which he isn't to be held accountable.

Ms. Mary Campbell: Thank you.

I think you'll appreciate the limits of my role in appearing as a public servant with the kinds of questions that might be better answered by the government. I would say that the bill is intended to reflect the court decisions that have occurred to date, obviously, and the advice of legal services, so that there are parameters placed around the decision-making.

I must say that I don't think it is carte blanche. I don't think anything in the act permits the minister to make decisions that are outside the scope of the act. I think these factors and the additional statement of public safety in the purpose is in fact intended to do the opposite—

● (1605)

Mr. Mark Holland: Sorry, but just on that, because I think this is an important point and I need clarity.... I've looked at all the reasons why the minister can deny an application. Looking at those, I try to find a way that you couldn't just use any one of those for virtually any reason.

Secondarily, how is the minister...? What process or accountability mechanism is in place? I don't see it in this bill. Maybe you can explain it to me. If the minister just says it was because of reason *x*, for him, or her, if the future minister is a she, to then be held accountable to explain the decision and rationalize it based on the criteria given. I don't see that accountability mechanism. Am I missing that somewhere in the bill?

Ms. Mary Campbell: Well, the act does require the minister, where it's a denial, to give written reasons for the decision, so that's one element of the accountability. Those reasons and the decision are given to the Canadian offender who then of course has access to the courts—

A voice: No, no. Where—

Ms. Mary Campbell: —if they wish to challenge it.

Mr. Mark Holland: I'm sorry, but I think people are having trouble following some of what you're saying. One of the things I'm looking at in the bill is proposed paragraph 10(1)(l): “any other factor that the Minister considers relevant”. That's one of the factors listed. So I don't see where the minister has to submit a letter. I don't see that anywhere in the bill—

A voice: No.

Mr. Mark Holland: But even if it is in the bill—and perhaps someone could point that out to me, because I don't see it—if the minister can use a clause that states "any other factor that the Minister considers relevant", then I would posit to you that in fact under this legislation they can use any rationale they so choose. Beyond him or her writing a letter, how do we hold them to account when the standard given to us is "any other factor that the Minister considers relevant"?

Ms. Mary Campbell: Yes. The requirement to provide reasons in writing is in the existing act, so the bill is purely an amendment bill, and all the provisions in the act that are untouched by it remain in place—

Mr. Mark Holland: But we have in the bill, under factors, proposed paragraph 10(1)(l): "any other factor that the Minister considers relevant". Let's say I'm a minister and, for whatever reason, I've woken up and I don't like this particular individual or whatever it may be, and I say, "This is my reason and here is your letter". What accountability do we have?

Ms. Mary Campbell: Well, I think that's where some of the direction from the courts comes into play. But I'd invite Mr. Laprade to perhaps comment on that.

Mr. Michel Laprade (Senior Counsel, Legal Services, Correctional Service Canada): Subsection 11(2) of the act requires the minister, when he refuses the transfer, to provide reasons. The fact that a clause provides for the minister to consider any other factor relevant cannot be read in isolation from the other provisions of the act, especially the purpose of the act. The minister could not simply render a decision on a matter by saying that he decided today that he didn't like an application and he is refusing it. It—

Mr. Mark Holland: Okay, but let me give—

Mr. Michel Laprade: —has to be related in reality with the purpose and principle of the act.

Mr. Mark Holland: Let me give you a specific example. Let's say you have an offender serving in a foreign prison where they have no access to rehabilitation and no access to programs, which is unfortunately a very common occurrence. The minister can refuse under proposed paragraph 10(1)(h): "whether the offender has refused to participate in a rehabilitation or reintegration program". Well, they may not have had any—

Ms. Mary Campbell: Correct.

Mr. Mark Holland: —so you could say that he didn't have any rehabilitation. Well, it's because it wasn't offered.

So the point I'm making here is that regardless of whatever, let's say he writes a letter and says it's because of any one of these or, as in proposed paragraph 10(1)(l), "any other factor" that he considered relevant within whatever extremely broad constraints we're talking about. What is the accountability mechanism to hold that minister to account if he or she is really reaching in giving some reason that really stretches it and everybody goes "well, wait a second, that doesn't make a lot of sense"?

Because as I'm reading it, other than providing a letter, there's no other mechanism of accountability.

● (1610)

Mr. Michel Laprade: It is the same as always existed since the first Transfer of Offenders Act.

Mr. Mark Holland: So why do we need this legislation, then?

Mr. Michel Laprade: It has always been a ministerial decision. The fact is that we help by guiding the minister in taking into account certain factors or considerations.

As a matter of fact, when these considerations are laid out in the act, they're not laid out in such a fashion where it is to guide the minister in denying versus approving: they're there to be considered. The minister can consider that an offender meets one of those factors and still decide to grant a transfer despite the fact that one element is met, because he considers other factors to be more important. This is not a recipe type of legislation where you pick one in order to decide to deny a transfer just on that basis.

The Chair: Thank you, Mr. Holland.

We'll move to Ms. Mourani.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chair.

First of all, I want to thank our witnesses for joining us and for providing us with information on this bill.

I would like to clarify one thing. The current legislation was enacted in 2006. You have the latest statistics on the number of applications approved and rejected. Do you have any similar statistics covering the period from 2003 to 2005? Have you observed a drop in the number of applications rejected or have the numbers stabilized somewhat?

[*English*]

Ms. Mary Campbell: Yes. We do have statistics over the past decade at least; they vary from year to year. They do go up and down. They did go down somewhat a few years ago, but I would say that at this point the statistics we have in terms of approval rates are showing that around 65% to 70% of the applications are approved.

[*Translation*]

Mrs. Maria Mourani: So then, the number of applications approved dropped, and then increased slightly. Is that correct?

[*English*]

Ms. Mary Campbell: Yes. I would point out that the Correctional Service of Canada puts their annual reports on international transfers on their website, so quite a bit of data is available—

[*Translation*]

Mrs. Maria Mourani: I'd like us to have a copy of this document, Mr. Chair.

My other question concerns the wording of the act. Correct me if I'm wrong, but as it is currently worded, the act imposes an obligation on the minister to respect certain criteria. If Bill C-5 is adopted, the wording would change from "shall consider" to "may consider". Is that correct?

[*English*]

Ms. Mary Campbell: That's correct.

[*Translation*]

Mrs. Maria Mourani: This would mean that the minister is no longer obligated to consider whether the foreign entity or its prison system present a serious threat to the offender's security or human rights. If the minister feels that all factors point to approving the transfer, in particular the most important consideration, namely the offender's security and survival, then he could choose to consider them, or not. Isn't that right?

It's possible that he might not consider them. Isn't that right? Do you not think that this simple fact puts Canada in a position of not upholding the international conventions it has signed respecting the protection of the rights of children, as well as NATO conventions respecting detention conditions and the protection of citizens, even those who have committed criminal offences?

Doesn't this violate Canada's current corrections and conditional release legislation? There is something here that doesn't make sense. Would you not agree?

[*English*]

Ms. Mary Campbell: Yes. Again, I think there's a perennial "may" versus "shall" debate on many issues. I'll perhaps invite Michel to comment on that a bit.

Again, the idea was not to be able to ignore certain factors. But there may simply be situations where certain factors are not relevant. For example, with regard to the fact that the offender is incarcerated in a very developed country with comparable standards of prison conditions, the factor simply becomes irrelevant and there are other factors that warrant more attention by the judge. Similarly, the offender may be in very good health and it's just not a factor that warrants much consideration. The idea is not to ignore things, but rather to be sure that the minister is focusing on those factors that are most relevant.

But on the "may" and "shall" question, I wonder if Mr. Laprade would like to comment.

● (1615)

[*Translation*]

Mr. Michel Laprade: The minister would have the discretionary authority to approve, or deny, a transfer. The bill lists a series of factors and we've tried to move away from criteria as such. We've tried not to have a list of criteria that the minister must comply with or select from when deciding to approve or deny a transfer.

Mrs. Maria Mourani: That is what happens now.

Mr. Michel Laprade: I'm not telling you what happens now. The bill merely sets out a number of factors that may be considered, and that's why...

Mrs. Maria Mourani: There is no difference between a factor and a criterion. If I'm the minister, I can approve or reject an offender's application. What if the offender was being detained in a country where he was being tortured daily, where no programs were available or where he was barely being fed. As minister, it is my choice to consider, or not to consider, this factor when determining whether the offender presents a public security threat.

As Ms. Campbell stated so eloquently earlier, the great paradox here is that these offenders will return to Canada and we can't even be certain that they followed any programs or worked on curbing their criminal traits. These offenders could be more dangerous or just as dangerous when they are returned to Canada. To my mind, prison is like a crime school where offenders learn to develop networks and to become even more dangerous. We will not have had any control over their situation. When they near the end of their time in prison, they will end up back here in Canada and will not be subject to even a minimum level of surveillance. Once they are transferred, they will spend a little time in prison. After that, however, they will be monitored by correctional services until they have served out their sentence.

So then, we're relinquishing our control and giving the minister, as you pointed out, the discretionary authority to select whichever criteria he wants. I find that somewhat unusual.

Could we not, for instance, have added some factors such as children and the obligation to consider the safety of the offender's children and family?

[*English*]

The Chair: Thank you, Madame.

We're about a minute over, but we'll let you answer.

[*Translation*]

Mr. Michel Laprade: I'd like to focus on the concept of "shall" versus "may" in the context of legislation. As for a criterion and a factor, there is a difference between the two. When certain criteria must be respected, theoretically this leads to a positive, or negative, decision. That's not the case here. What we have in the bill is a list of factors that the minister must consider in the decision-making process.

Mrs. Maria Mourani: The minister may consider these factors.

Mr. Michel Laprade: In any event, when dealing with words like "may", "shall" or "will", we have to...In the decision-making process, the minister will consider a number of factors listed, or other any other factor, for that matter. The amended section 10 clearly states that the minister may consider the following factors.

[*English*]

The Chair: Thank you, Mr. Laprade.

Mr. Davies, for seven minutes.

Mr. Don Davies: Let me get some short snappers out first.

Do you agree with me that the international program is working very well? Is that correct?

● (1620)

Ms. Mary Campbell: In general, I think that's the consensus.

Mr. Don Davies: Would you agree with me that the transfers have a positive effect on public safety in this country? Would you agree with that statement as well?

Ms. Mary Campbell: In general.

Mr. Don Davies: That's because if you don't transfer an offender and their citizenship is Canadian, they are coming back to Canada, and your phrase is "without any controls". Isn't that right?

Ms. Mary Campbell: Correct.

Mr. Don Davies: So without a transfer.... A convicted person who could be a murderer or a pedophile can come back into Canada if they don't get transferred, and we will not have a copy of their record, will we?

Ms. Mary Campbell: Normally we will not, unless there's some kind of police agreement on sharing of information.

Mr. Don Davies: So it's very possible that these people will come back into our communities and we won't even know they're here, isn't that right?

Ms. Mary Campbell: It's possible.

Mr. Don Davies: You have said that there are "very valid public safety reasons for the transfer of offenders to Canada while they are still under sentence". You gave a number of reasons for that. Is that right?

Ms. Mary Campbell: Correct.

Mr. Don Davies: You said that "their foreign conviction will be recorded in the RCMP criminal convictions database if they're transferred...which otherwise would not be the case if they were simply deported back to Canada". That's your testimony, is that right?

Ms. Mary Campbell: Correct.

Mr. Don Davies: It's desirable that we have as many transfers as possible back to Canada from a public safety perspective. Would that be a fair comment?

Ms. Mary Campbell: I'm reluctant to quantify—

Mr. Don Davies: Just in general, just as a general statement of principle.

Ms. Mary Campbell: In general, that's why the scheme exists internationally: because it is perceived as having some value. Having said that, obviously there are exceptions and other factors to be considered.

Mr. Don Davies: Sure. Well, broadly speaking, what would be the thrust of your testimony? Would it be that transfers are positive for public safety or, broadly speaking, negative? What's your opinion?

Ms. Mary Campbell: I would say, broadly speaking, that the evidence is that they have been positive.

Mr. Don Davies: Positive: okay.

Now I want to talk about this "shall" or "may" stuff here. The current act, in section 10, says, "the Minister shall consider the following factors...", and there are four of them mentioned. The proposed act would read that "the Minister may consider the following factors", and it takes those factors that were "shalls", turns them into "in the Minister's opinion", and then continues with "may" for all the rest of them.

Would you agree with me that it takes a mandatory consideration of criteria and changes it to something that is purely discretionary, and that nothing in this proposed legislation would require the minister to take into account any particular factor? Is that right?

Ms. Mary Campbell: I'm not sure that I would agree with that global statement.

Mr. Don Davies: Well, I'm reading in the legislation that "the Minister may consider the following factors...".

Ms. Mary Campbell: Right, but I would also point to subclause 3 (1) in the bill, for example, and its reference to paragraph 10(1)(a) of the bill, where, yes, in the *chapeau*, it does say that the "Minister may consider". But then the test, for example, in paragraph 10(1)(a), is "will constitute a threat to the security of Canada". So that's a fairly onerous requirement on the minister in making a decision about that particular factor.

Mr. Don Davies: Yes, but the whole thing, Ms. Campbell, is qualified by "may consider the following factors" and "whether, in the Minister's opinion". The minister does not have to consider that factor. They may or may not. I'm a lawyer, and I know what the difference is between "shall" and "may".

Now, how would you appeal that? At present, for judicial review, you're left with the fact that under the present legislation—and I understand there's ministerial discretion—you at least have something to hang your appeal on, because you can appeal on the factors that "the Minister shall consider". Under this bill, if the minister did not consider any of those factors, on what would you base your judicial review with a statutory regime which says clearly that Parliament has said to that minister, you may or you may not? What would you appeal on?

Ms. Mary Campbell: As Mr. Laprade has indicated, the minister's decision-making has to take place within the framework of the purpose of the act, so while it's difficult for me to speculate as to what an individual might argue, presumably the argument has to take place within the context and the purpose of the act. If a factor that appears to be relevant has been ignored—

Mr. Don Davies: But, Ms. Campbell, that's not if Parliament has said specifically to the minister he "may" consider it, and particularly if they introduce legislation showing that the previous legislative iteration said "shall". A judge would say that Parliament's will is that the minister is not mandatorily required to take into account that consideration.

Ms. Mary Campbell: Yes, I appreciate—

Mr. Laprade.

Mr. Michel Laprade: The courts have already said that. In Kozarov, the court has already said that the factors listed in the act do not lend themselves to a positive or negative decision by the minister and that the minister can take into account any other factors that are relevant in the context, and—

● (1625)

Mr. Don Davies: Correct, but the current legislation says the minister must take into account those four criteria.

Mr. Michel Laprade: Yes, but even if he does not list or use one of those factors in making a negative decision on a transfer, for example, what the minister is obligated to do—and this is what the courts have said—is that there has to be a decision that is provided with rational reasons. You have to be intelligible in your decision, so that the person who receives the decision knows exactly the basis of the denial, and those elements or considerations the minister lists, or the reasons for the denial, have to be linked with the purpose of the act itself and—

Mr. Don Davies: Of course. I understand how the judicial review process works.

Mr. Michel Laprade: —this is within the context of the existing legislation right now.

Mr. Don Davies: Right. I understand that there is discretion and that the minister can make whatever decision he wants as long as it's rationally connected. But the one direction in the current legislation or the one thing the minister cannot avoid is that he must consider four factors. That has to be the case: "the Minister shall consider the following factors...". If the minister didn't consider those factors, there would be a successful judicial review.

Under the current proposed legislation, that would change. The minister would not be required to consider any of those factors. That's what I'm driving at. I'm not getting a satisfactory answer that would tell me that the minister would be required to take into account these factors, when it clearly says that he or she is not required to. That's the concern.

Ms. Mary Campbell: The only thing I would add—and I'm sorry that I'm going to disappoint you, because I'm not going to answer your question directly—is that I would just point out again that denials of applications are not a new phenomenon, and they are not a rare phenomenon.

For example, when you look at the annual report for 2008-09, you will see a graphic about denials of applications. This is the time period between 2004 and 2009. Of the applications denied during that period, 85% of the denials were in fact done by the foreign country, not by Canada. Fifteen per cent of denials....

Mr. Don Davies: Is it your testimony that you think denials will go up or down if this legislation is passed?

Ms. Mary Campbell: It's impossible to answer that. It's impossible.

Mr. Don Davies: You have no basis to extrapolate? You have no opinion?

Ms. Mary Campbell: No.

Mr. Don Davies: Okay.

Thanks.

The Chair: Thanks very much.

We'll go to Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Chair. I see that you're enthralled with the evidence being presented here. I think that in court—we all watch television—Mr. Davies would be accused of badgering his witness. But anyways, we'll leave that alone.

A voice: [*Inaudible—Editor*]

Mr. Rick Norlock: I was going to start off with this, so I'll be a little bit disjunctive, but there are some reasons for that. You were talking about refusals. My information, or the statistics I've read with regard to refusals—and I'm referring to the Canadian refusals—is that between 2003 and 2007 about 40% of requests were refused.

That's from 2003 to 2007. Would those numbers be roughly correct? My clock is ticking, so if it takes you a while to look, I'd just say that if my numbers are exaggerated or you don't think they're accurate, you can come back to them later.

One of the general thrusts I'm seeing here is that any change to this legislation is not good because it gives too much power to the minister; I think you've answered that rather well, in that he "may consider" not that he "shall consider".

You've said in general that it is generally safer to bring back Canadians who are convicted of crimes in foreign lands because we can keep a better eye on them here or because there would be some form of record. Would it not be correct to say that you could correct that very easily by revisiting that transfer agreement and changing Canadian regulatory regimes to say that the record in that country is automatically transferred to this country should the prisoner be transferred? Their record of conviction would then become part of a criminal record in Canada.

● (1630)

Ms. Mary Campbell: Do you mean if they came back outside of the transfer program?

Mr. Rick Norlock: No. I mean if they came back inside the program. If the person came back....

Ms. Mary Campbell: If they come under the transfer program—

Mr. Rick Norlock: It does come...?

Ms. Mary Campbell: —the criminal record comes with them. That's correct.

Mr. Rick Norlock: Thank you. So there's a record, but what you're saying is that if the person completes the sentence in the other country and comes back to Canada, there is not necessarily a transfer agreement unless there's a reciprocity agreement with that country.

Ms. Mary Campbell: That's correct. There are some agreements in place, for example, with certain states in the U.S. where that information, in relation to certain categories of offences, I gather, is routinely shared with Canadian officials.

Mr. Rick Norlock: So we can say that.... If my memory serves me correctly, from a policing perspective we have access directly in the United States with regard to people's criminal convictions, back and forth, through NCIC.

Is that not correct, Mr. Laprade?

Mr. Michel Laprade: I believe that it is correct.

Mr. Rick Norlock: Since 80%-plus of the prisoners transferred are Canadians serving time in American jails, for 80% of the people we're all worried about here in terms of whether their records come back, we actually have access to their records, because they've served time in the United States. I think the next country is Great Britain; I suspect that we may have a reciprocity agreement with Great Britain, although I don't have that on paper here.

Mr. Michel Laprade: If I may, the fact that the information is available doesn't make it a criminal record in Canada. All it does is provide information of a foreign record of some sort.

When an offender transfers to Canada, while it doesn't create a conviction in Canada, it is recorded in our files, in CSC files, and all over—in CPIC as well. That's why, when the ITOA was put in place, the Criminal Records Act was also amended, so that basically the record that is created is treated as if it were a record in Canada.

Mr. Rick Norlock: My point was that Canadian law enforcement agencies, which include the CBSA, Corrections Canada, the RCMP, all police services, and some others, have direct access to those 80%-plus, plus Great Britain, which would raise the bar to maybe 85%. Of those people, Canadian law enforcement would have access to their records. Whether or not it forms part of the Canadian record, there is access immediately—in seconds—through the computerized system. Would that be correct?

Mr. Michel Laprade: Yes.

Mr. Rick Norlock: Okay. Getting back to the costs, we've heard members talk about the costs if a person comes back to Canada, for instance, and they haven't had a rehabilitative program. I don't care if it's a Liberal or an NDP minister of justice in this country—it wouldn't be a Bloc Québécois, because it just wouldn't be—I would hope and think that any minister of justice, because he's probably going to be a lawyer, would have the safety of the Canadian public in his or her consideration. It doesn't matter what party they're from.

But here's what I'm saying. The average person looks at this as an immediate cost. I don't know if you want to comment, but you probably wouldn't. We've taken somebody who has committed horrific acts, in some cases, in another country and we bring them back to Canada. It's going to cost between $90,000 and $130,000—up to maybe $180,000—a year to keep that person in a prison in Canada.

Hopefully, most of these offences, if we look at them—at least I've looked at them—tend to be punishable by 10 years to 15 years or less in Canada. Would that be correct?

Ms. Mary Campbell: Well, the only comment I would make on that.... You're correct when you say that I won't comment on the cost issue, but I do look at every single file, so I have personally read well over 100 files in the last few months. I haven't kept systematic records, but I would say in the vast majority of the files, the Canadian committed a drug offence abroad. I don't know the maximum penalties, but by and large they're drug offences—drug trafficking.

Mr. Rick Norlock: Thank you.

My indication is that in 2001-02, 96 persons were transferred back to Canada; in 2008-09, it was 82 persons. That's a difference of 10. In 2001-02, none of these amendments or previous amendments were in place, yet the number of transfers was basically the same.

● (1635)

The Chair: Very quickly, please.

Ms. Mary Campbell: I'd have to look more closely at the numbers you're using because I don't want to confuse the issue.

The Chair: Maybe we can come back to that.

The other thing I should mention on some of these questions, please feel free.... If you leave here and you think you should have answered a question this way or that way, or you think there's more information, please submit that to the clerk, and he'll see that those answers get supplemented.

Mr. Kania, five minutes.

Mr. Andrew Kania (Brampton West, Lib.): The statistics we have are that in 2004-05, the last year of the Liberal government, there were four people denied. In the last year we have statistics for under the Conservative government, 2006-07, the number was seven. Is that accurate?

Ms. Mary Campbell: Again, I'm not sure what document you're working from or what your source is.

I have, from the public document of the annual report from 2008-09, that in 2004-05, zero decisions were denied; in 2005-06, two were denied; in 2006-07, 23 were denied; and in 2007-08, 43 were denied.

Mr. Andrew Kania: That's fine. It has gone up in terms of denials, but in the end these aren't significant numbers in terms of absolute numbers. When I read this bill, the first question I'm looking at is why: why has this particular bill has been introduced? What problem is it trying to solve?

Based on what you've indicated—and I don't want to misquote you—I got the impression you were saying that this bill has been introduced because of the court decisions that say various factors need to be taken into account. You're saying this bill will solve the court case issues by providing additional factors for the minister to consider.

Is that what you're saying, that this is going to correct an error in the law as pointed out by judges?

Ms. Mary Campbell: I think I again have to emphasize that my role as a public servant is to explain the bill, to provide factual details. I think that if we get into the area of motivation or aims, I would suggest that it's a question that might be better answered by a government representative.

Certainly I would say that one of the issues has been to take into account the court decisions, because we have had a number of them. So one of the elements of the bill, obviously, is intended to try to address those. Will it solve it completely? I can't comment on that, but it is to address what the courts have said to us.

Mr. Andrew Kania: I'm going to suggest to you that it's not to address what the court has said, but in fact, it's an attempt to get around what the court has said.

In particular, there is a case here...I can't pronounce it, but it's Getkate. Are you aware of that case?

Ms. Mary Campbell: Yes.

● (1640)

Mr. Andrew Kania: So in analyzing that case, the Federal Court in essence overturned what the Minister of Public Safety had decided in denying a request. The court indicated:

> Since the reasons articulated by the Minister were “contrary to the evidence and to the assessment and recommendations by his own Department,” Mr. Getkate's request for a transfer was referred back to the Minister for redetermination.

I have gone through this case. They talked about “clear and unambiguous evidence”, including from Correctional Services Canada. In analyzing this case, it's clear to me that if this is one of the decisions that the minister has taken into account—and I suggest to you it's the predominant decision taken into account when drafting this legislation—it's not an attempt to clear or clarify or prove the law. Rather, it's a clear attempt to circumvent the law and get around what the law actually is because the minister didn't like being told that you can't just do whatever you want and you have to actually be reasonable.

Would you agree with that assessment?

Ms. Mary Campbell: Again, I'd like to just provide some context. There have been 10 Federal Court decisions since 2004. Out of those 10 cases, six were dismissed and four were granted.

In relation to Getkate itself, again I'd invite Mr. Laprade as legal counsel to make any comments on that case.

The Chair: Very quickly, please, as your time has just about run out.

Mr. Andrew Kania: Thank you, Mr. Chairman.

Since you're going to respond in terms of the four cases, I'm going to suggest to you once again that this is simply an attempt by the minister to get around the fact that he was told he was not exercising his discretion in a reasonable manner.

Mr. Michel Laprade: I'll limit my comments to the court cases and the direction of the court in these matters. The courts have emphasized greatly that they have to give great deference to ministerial decisions and discretionary decisions. That's administrative law in Canada; that's the way it is.

However, they've pointed out—and that's what continues to be relevant and will continue to be relevant even after this bill will be in place—that the minister cannot make decisions out of the blue. He has to make decisions that are intelligible, based on rational reasons. So the fact that, for example, in Getkate, we may have had a decision where the reasons were not in sync with the whole file, that made it the case we got.

The reality is that each decision has to be made on using the factors and circumstances of the case that are in front of the minister. He has to make a decision on the basis of those facts and the evidence he has before him and he has to make a decision that is intelligible on these bases. So it is not a pure discretion.

The Chair: Thank you, Mr. Laprade.

Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for their attendance today and for their testimony.

To pick up on where my friend Mr. Kania might have been going, I understand statistically that in the decade preceding 2007 there were over 10 times as many Canadian offenders transferred back to Canada as there were offenders who were transferred out of Canada to foreign jurisdictions. Does that sound right?

Ms. Mary Campbell: That sounds like the usual ratio.

Mr. Brent Rathgeber: There were 1,351 Canadian offenders to Canada and 124 offenders out of Canada.

Ms. Mary Campbell: Yes.

Mr. Brent Rathgeber: Do you have any idea why such a disproportionate number of Canadians want to come home?

Ms. Mary Campbell: You know, it would be pure professional speculation on our part as to why in many cases foreign offenders don't wish to go home. I don't know at the moment how many foreign offenders we have in Canadian prisons so as to judge what proportion of them are choosing to apply for transfer or not....

But Michel may know that.

Mr. Michel Laprade: I may add something. There are several factors that influence the way things are in the statistics. Foreign offenders in Canada are susceptible to removal orders. Many of them will get removal orders, and as soon as they get out on parole.... A long time ago we had parole for deportation purposes. We've dropped that, but we still have a number of foreign offenders who are removed from Canada as soon as they get out on full parole or on day parole when they are reaching the full parole eligibility date.

So the application for transfers here from foreign offenders and the numbers we have in comparison to other countries may seem a bit lower, but the reality is that they do get back to their own countries on deportation rather than on transfer—more so than in other countries, for example, where they don't have a parole system and they apply for transfer.

Mr. Brent Rathgeber: Does Canada receive compensation from other countries that send Canadian nationals back to Canada under this arrangement?

Ms. Mary Campbell: No. It's regarded as an international mutual assistance arrangement, if you like.

Mr. Brent Rathgeber: Similarly, then, we don't pay other countries that house their nationals who might have been convicted in our country.

Ms. Mary Campbell: That's correct.

● (1645)

Mr. Brent Rathgeber: Thank you.

I understand, again from the same statistics, that the vast majority of denials were on the basis of being a threat to Canadian security or that the individual had long abandoned their roots to Canada. Is that correct?

Ms. Mary Campbell: Again, I haven't done a strict analysis to say yes or no to that. I know that those are two of the reasons that are cited.

Mr. Brent Rathgeber: Does the department keep statistics on why applicants are denied a transfer to Canada from a foreign jurisdiction? This isn't a Library of Parliament document that I have, so maybe our analysts know where they got that from, but we'll come back to that.

Ms. Mary Campbell: I personally don't have those statistics, but I can certainly inquire as to whether they are kept or are available.

Mr. Brent Rathgeber: I guess where I'm going with this is that somebody must know why individuals have been denied transfer. There must be a record kept. Are the applicants provided with reasons?

Ms. Mary Campbell: Yes, absolutely. In each individual file there would be an indication as to what the decision was, and if it's a denial, why.

Mr. Brent Rathgeber: And the applicant is entitled to a copy of perhaps not the file but certainly the determination and the reasons for it?

Ms. Mary Campbell: That's correct.

Mr. Brent Rathgeber: Does anything in the bill before us change that?

Ms. Mary Campbell: No.

Mr. Brent Rathgeber: So to alleviate Mr. Davies' fear of not having anything to appeal on, the unsuccessful applicant will still receive a written reason as to why his application was denied.

Ms. Mary Campbell: Yes. That's correct.

Mr. Brent Rathgeber: Thank you.

The bill is very short, as you no doubt know. I'm looking at a previous version of the bill; I think it was called Bill C-59 in a former session of this Parliament. It had an additional clause. It was clause 4 that amended a bill that was then before Parliament and would have amended the faint hope clause. It's not in the current version of the bill. Is that correct...? Well, it is correct, but why?

Ms. Mary Campbell: Again, I'd have to check and get back to you. Since then, there has been a bill tabled in Parliament in relation to the faint hope clause and it may be that the matter is covered off in that bill as opposed to in this bill. We'll check into that.

Mr. Brent Rathgeber: Okay. This bill creates—

The Chair: Very quickly, please.

Mr. Brent Rathgeber: —a number of additional factors that the minister may consider. We've heard what they are. I'm not going to repeat them. In your view as a person with some expertise in this, does this create an unfair and inequitable decision-making process?

Ms. Mary Campbell: I don't think I can comment on that.

The Chair: Thank you very much, Mr. Rathgeber.

We'll now move to Ms. Mourani.

[*Translation*]

You have five minutes.

Mrs. Maria Mourani: Thank you. I'd like to share two minutes of my allotted time with my colleague. Alright?

Mr. Roger Gaudet (Montcalm, BQ): I don't even need two minutes. I just have a quick question.

Mrs. Maria Mourani: You go right ahead then.

Mr. Roger Gaudet: I just have one question. What if I were arrested on some charge in Thailand, served a two-year sentence and were then released. I return to Canada and I don't have a record here. I could become Prime Minister of Canada. If that's what you call security, then we're in big trouble! I just wanted to make that point.

Mrs. Maria Mourani: Well, that was quick!

Mr. Roger Gaudet: I have nothing further to say.

Mrs. Maria Mourani: Fine then.

Mr. Roger Gaudet: Someone could become Prime Minister of Canada after spending two years in jail in Thailand. Think about that! It wouldn't be a problem at all! The law needs to change.

Mrs. Maria Mourani: I would like to discuss the case of Mr. Ronald Allen Smith. Are you familiar with this case?

[*English*]

Ms. Mary Campbell: Yes.

[*Translation*]

Mrs. Maria Mourani: Mr. Smith is an Albertan who, if memory serves me correctly, is still being detained in Montana, a state that has the death penalty. He murdered two people. He has been sentenced to death and, if I'm not mistaken, the government is still refusing to request his repatriation to Canada.

The death penalty was abolished in Canada in 1976. Two successive Conservative ministers, the Minister of Justice and the Minister of Public Safety, have refused an inmate transfer.

If my interpretation of the current legislation is correct, when a person is sentenced to death, it's possible to commute that sentence to life in prison.

[*English*]

Ms. Mary Campbell: He is not eligible to be transferred because the sentence is one that we cannot administer in Canada—the death sentence. That's correct.

[*Translation*]

Mrs. Maria Mourani: So then, his sentence must be commuted to life in prison.

[*English*]

Ms. Mary Campbell: That would be a matter for American authorities to decide. If someone is serving a life sentence in the United States, they are eligible for transfer to Canada.

● (1650)

[*Translation*]

Mrs. Maria Mourani: However, in the case of a person sentenced to death in the United States, if Canada decides to repatriate that person and the United States agrees, that is, if the two countries agree and the offender also agrees, when the offender is returned to Canada, his sentence is recalculated in some way. Isn't that right? His sentence is commuted from a death sentence to life in prison.

[*English*]

Ms. Mary Campbell: The state would have to take action first to render the sentence one that could be enforceable in Canada.

[*Translation*]

Mrs. Maria Mourani: The sentence would have to be rendered in Canada.

[*English*]

Ms. Mary Campbell: Yes.

[*Translation*]

Mrs. Maria Mourani: The Secretary General of the Council of Europe made a statement in which he accused Canada of subcontracting the death penalty to other countries.

Do you feel that this bill as it is now worded will make this kind of decision even easier, or that it really won't change much—that depending on the government and its values, we could very well be subcontracting the death penalty?

[*English*]

Ms. Mary Campbell: I think all I can say is that there is no transfer application currently before Canada. There is nothing in this bill that on the face of it is relevant to the case.

[*Translation*]

Mrs. Maria Mourani: Earlier, you stated that amendments were made to address a number of shortcomings in the act. Specifically changes were made to protect women and children.

Do you not think that a provision should have been included whereby the minister is required to consider whether or not a person has been sentenced to death?

[*English*]

Ms. Mary Campbell: I must say I think that's a question for the government to answer.

[*Translation*]

Mrs. Maria Mourani: Fine then. Thank you.

Do I have any time remaining?

[*English*]

The Chair: You have one minute.

[*Translation*]

Mrs. Maria Mourani: One minute. Very well. Thank you, Mr. Chair.

I'm wondering how this bill can be improved upon, because as it is now worded, there is unfortunately no way really that we can support it. Our objective here today is to find a way to improve it.

For instance, the following changes could be made to the bill: in subclause 3(1) which amends section 10 of the Act, the word “shall“ could be substituted everywhere for the word“ may“. In addition, after paragraph (*l*) which reads: “any other factor that the Minister considers relevant“, we could add another paragraph that could say: “whether or not countries have the death penalty“. That would be one way of improving the bill in such a way that we could support it.

[*English*]

Ms. Mary Campbell: I think that certainly the government has always indicated its respect for committee work, and any motions or adjustments that are made at clause-by-clause would be taken into consideration.

[*Translation*]

Mrs. Maria Mourani: You're saying it would be possible to make these changes? That's what I want to know. Could the bill be amended this way? We could have a go at it, I think.

[*English*]

Ms. Mary Campbell: I don't think I have anything to add.

[*Translation*]

Mrs. Maria Mourani: You're smiling when you say that.

[*English*]

Okay. Thank you.

The Chair: Your time is up.

Mr. McColeman.

[*Translation*]

Mrs. Maria Mourani: You know all about me and my amendments, Mr. Chair.

[*English*]

The Chair: At 5:36, you bet—

A voice: Wishful thinking....

The Chair: Go ahead, Mr. McColeman.

Mr. Phil McColeman: I'm just waiting for the conversation on the other side to quiet down.

First of all, thank you very much for being here. Your views are important to us.

I'm looking at this from the point of view of the victims involved in crime, and frankly, I think our government is too, in terms of putting this forward. Because it does expand the powers of the minister to make determinations on what I would think would sometimes be a common sense basis, from the point of view of people who could be or would be affected, probably, from what I see from the statistics, perhaps in the exceptional situations. Perhaps there are situations out there in which we have been frustrated in terms of making sure we keep the public safe, but we are tied perhaps to some agreements, some rules, or some binding policies that haven't allowed us to do that in the past.

Is that a fair assessment of the terms of the general landscape of these changes to this law?

● (1655)

Ms. Mary Campbell: Yes, and I think one of the challenges is that there are many, many different fact patterns and situations. I recall a case from about 10 years ago, although I have to confess that at this point in my career everything is about 10 years ago—

Voices: Oh, oh!

Ms. Mary Campbell: Maybe it's my age.

We had an unusual case of a Canadian who was facing allegations of serious fraud in Ontario. The person disappeared to England and ultimately turned up accused of a very serious violent offence in England. He was convicted and transferred back to Canada under the transfer of offenders act, unbeknownst to the family here in Canada, because of course they were estranged from him at that point. The family back here in Canada was very upset. I met with them. They had not been notified in advance. They were very concerned about the physical proximity of the individual. They were very concerned about the risk he posed to people here in Canada.

I simply raise that as an example of a situation where there can be fact patterns beyond what you can imagine. The objective of the legislation and the decision-making is to provide sufficient flexibility without being wide open. I think that's a good example of a case where there were victims here in Canada of a previous set of circumstances who felt victimized again due to not having been taken into account in the transfer decision.

Mr. Phil McColeman: I appreciate you bringing up that example, because one of the issues we've been studying as a committee, and moving forward with consensus on, is in regard to sexual offenders and how they move around and how they commit their crimes in various jurisdictions right around the world, with victims then having to find out that these people are back in their midst without any notice. These are some of the most horrific people in the world, who attack children and our families.

When my colleagues across the table say it's not good to expand the powers of a minister or ministry to be able to deal with these horrific situations when they occur, they are not regular occurrences. They are not the people who get charged with drug offences in Mexico or some place. At least, I don't believe they are; maybe I should concur with you on that.

I'm thinking that what this legislation allows us to do is to place some very common sense tests on whether or not these people should be allowed back in the country that, under the current law, ties the hands of the people making those decisions. That's why we're asking for these revisions. Am I off base in stating what I've just stated?

Ms. Mary Campbell: No, and certainly when I say that the vast majority of transfer cases involve drug offences, obviously there are other offences as well. I certainly have seen a number of sex offences cases in the transfer application files.

As you've indicated, in this day and age I can certainly think of one where the person was active in Canada, was using the Internet in order to commit his offences, and then travelled down into the United States with the intention of committing an offence and was in fact apprehended by American authorities. But the person was active in criminal activities in Canada as well. I think there are concerns, clearly, about the mobility and reach of sex offenders, particularly in today's environment.

Mr. Phil McColeman: Just on that note, in terms of Internet crime and cybercrime, which is a topic we're certainly all aware of it but have yet to really seriously address in terms of public safety applications as changes to laws like this are looked at, how much does it play into the minds of the people who are putting this forward in terms of the legal analysis as to how we're starting to really have to react in all forms of law to deal with that?

● (1700)

Ms. Mary Campbell: I think it is clearly an issue of concern to everyone. When the act was created in 1978, there were no computers. There was no Internet. It was not a forum that was available to people intent on criminal activity. Obviously the world has changed significantly since then.

The Chair: Thank you, Ms. Campbell.

We'll now move to Ms. Mendes.

Mrs. Alexandra Mendes: Thank you, Mr. Chair.

[*Translation*]

Good day, Mr. Laprade, Mrs. Campbell.

I want to begin by asking you whether, in your opinion, it's normal to want to bring criminals before a judge and punish them for the crimes they committed in Canada, before they go to another country and commit other crimes? You say that victims are afraid these criminals may be allowed back into Canada. If the US authorities were more effective and were able to arrest them, it is to Canada's advantage to punish these offenders here in Canada.

[*English*]

Ms. Mary Campbell: Again, yes, there are many fact patterns. There may be individuals who already have a criminal record in Canada and then engage in and are apprehended for offences committed abroad. They may be committing offences in Canada that have not been detected.

Again, what we're trying to do here is assist the minister in making decisions about transfers. I'm not quite sure if your question is—

Mrs. Alexandra Mendes: My question is, are we now in the business of victim prevention? Is that what this is all about? The victims we're talking about in case of transfers for crimes committed abroad are abroad; they're not in Canada.

Ms. Mary Campbell: Yes, they are, but I think the consideration that's also reflected in here is in relation to victims who may also exist in Canada, but indeed, also to preventing further victimization.... So if there is a concern—

Mrs. Alexandra Mendes: Maybe we should bring them to face the courts here, then?

Ms. Mary Campbell: Correct, but if the concern is that returning to Canada would in some way raise the potential for new crimes in Canada, for further victimization—

Mrs. Alexandra Mendes: Why? Aren't they going from prison to prison?

Ms. Mary Campbell: Initially, yes.

Mrs. Alexandra Mendes: Initially—until they fulfill their term, I imagine.

Ms. Mary Campbell: Yes.

Mrs. Alexandra Mendes: If they finish their term in the United States or Thailand or wherever, they get back to Canada of their own free will and they can continue to commit crimes. So what is the difference between finishing their term in a Canadian prison, an American prison, or a prison anywhere else? That's what I don't get about this bill, and definitely, what Ms. Mourani said earlier about the “shall” and the “may”, that makes a big difference in the context of this bill.

The whole idea of public safety, if we're transferring prisoners.... We're not talking about bringing back people who are free. We're talking about people who are in prison, who will go from one prison to another prison until they fulfill their term.

Ms. Mary Campbell: Yes, but I think the reality that also exists in that situation is that even in prison in Canada, unfortunately they can still commit offences, and that's something we have to consider. If they're coming back to Canada and will then be, if you like, reunited with a particular network or other criminal associates and will be able to more easily commit crimes in Canada even while in prison—

Mrs. Alexandra Mendes: How sure are we that they don't have exactly the same kind of training or reunification with networks in prisons abroad—or even worse—where we have absolutely no control over what they're doing or what they're being taught or what kinds of networks they're developing?

I don't really understand how letting our citizens be imprisoned abroad is any better for Canada. We offer rehabilitation services here. We offer rehabilitation programs—

Sorry?

The Chair: I'm questioning the relevance to the part of the bill; that's not what the bill is going to do, to just keep every prisoner in Canada. I think it's a recognition.... I'll let—

Mrs. Alexandra Mendes: No, no. It's keeping them out of Canada. That's what this bill wants to do: keep them out of Canada.

● (1705)

The Chair: No, I don't think the bill wants to do that.

A voice: Mr. Chair—

Mrs. Alexandra Mendes: Well, yes, I think that's exactly the intent.

The Chair: I'll give you extra time, because I invaded your space.

Mrs. Alexandra Mendes: That's fine.

But I think that's the whole point of this bill: to keep as many offenders out of Canadian prisons—

An hon. member: Who's the witness?

Mrs. Alexandra Mendes: Well, okay, we have different ways of reading this then—

An hon. member: Who's the witness? Come on.

Mrs. Alexandra Mendes: But I ask how that would in any way protect or safeguard Canadian public safety. In what way would that be better for us once they finish their terms, because eventually they will finish their terms?

Ms. Mary Campbell: I would point out again that the amendment to section 3, the purpose of the act, is a limited amendment. The rest of the purpose of the act is exactly as it has been up until this time, so in terms of what the act is intended to do, that wording is still in place.

Mrs. Alexandra Mendes: But the fact that we changed from “shall” to “may” is a big difference—

Ms. Mary Campbell: I understand.

Mrs. Alexandra Mendes: —and it takes away all the impartiality that should or must be used when evaluating transfer requests.

Am I out of time?

The Chair: Well, I gave you 38 extra seconds.

We're going to go to Mr. MacKenzie and then back to the Liberal Party again.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair.

Thank you to the witnesses.

Ms. Campbell, you brought up a very interesting case there, without names, and certainly I'm very familiar with it; I think I might even be named in the book.

But you raise a very important point and my colleagues should know this: there are victims in this country. In that case, it was a situation where the victims were here; they weren't victims overseas, where there was a murder committed. They were victims here. They were completely shocked. Their lives were turned upside down for a number of years. I've met with some of them, as you have, Ms. Campbell. We have to be cognizant of that.

Also, what you can't forget—I think my friend brought it up, and you've confronted it—is that when the original bill was brought forward in 1978 there were no cybercrimes, and there was not the video porn situation that we have with the Internet. We now probably all know.... I know that certainly in my riding, I have a situation—and I think Mr. Norlock does in his riding—where there's an individual in custody in another country for child molestation, but there are victims back here too. They are victims that got left behind when the perpetrator went to another jurisdiction and ended up being apprehended.

So my friends shouldn't be upset with having these issues in here. I think it's one of those things.... They are looking for something that isn't there. There were always challenges in the court to the system; there have been for a long time. But the solution is not to take away everything and say that everyone who applies is welcome to come home.

Ms. Mary Campbell: I would just comment in response that, in a way, this system is somewhat analogous to the system of conditional release. I think most experts would agree that releasing someone under conditions, supervision, and support prior to the warrant expiry date is the best way to release someone from custody. But many years ago, the government made a decision that there were some people whose needs are so great, whose risk is so high, that notwithstanding that principle, the best thing we can do, in fact, is detain the person in custody until the warrant expiry date because there are so many concerns about the individual.

In a sense, that's a perfect mirror comparison to some of the issues here. You might agree that transfer in general would be a good option, but there may be competing priorities or issues that make it necessary to make a different kind of decision. So in fact, the system detains—I'm not sure of the current number—somewhere around 200 to 250 individuals every year until the very last day of their sentences, because that's simply the best and the most that can be done in those cases.

Mr. Dave MacKenzie: Sure.

When we look at the numbers, and we can all look at the same numbers.... There is some sense my colleagues have that all of a sudden when this government took power we shut it all off. But the numbers are not significantly different. They vary from year to year, as they have over the years.

To me, they should welcome this legislation, because it lists the factors the minister “may consider”. Even if you want to say “shall consider”, it's not going to change anything. He shall consider it and then he or she can say, whether it's your party or our party, “I've considered those decisions and it's not going to happen”. But I think Mr. Laprade has made very clear what the courts have ruled they have to do. I think if my colleagues would look at it openly, they would find that it's a far better blueprint to follow than what the existing legislation has been.

If I have any time, Mr. Chair, I would share it with Mr. Lobb.

● (1710)

The Chair: I'm afraid, Mr. Lobb, you have 50 seconds.

Mr. Ben Lobb (Huron—Bruce, CPC): Well, that's great. Thanks very much.

In the short time I have, I'll say that the coalition on the other side asked questions about “shall” and “must” and “may”, but hardly mentioned victims at all. Obviously—

An hon. member: I've mentioned them all along.

An hon. member: Come on.

The Chair: Order.

Mr. Ben Lobb: That was my observation. I think it's a shame that they've read the bill through and thought about it and still can't come to the conclusion that this bill is trying to take a look at the victims.

Some of the comments made by the coalition across the way were just incredible to me. Mr. Holland referred to it as a terrible bill. Imagine that. It's a bill that takes into consideration victims and safety, and he calls it a terrible bill. It's a first for me.

Thank you.

The Chair: Thank you, Mr. Lobb. You're right on time.

We'll now go to Mr. Kania.

Mr. Andrew Kania: I'm going to respond to Mr. Lobb. I'm going to mention victims and the point of view of the reform government.

Let's discuss victims—

An hon. member: It doesn't hurt—

Mr. Andrew Kania: Well, it does, actually, for most Canadians.

In terms of victims, we're talking about victims in a foreign jurisdiction, because Canadians who are convicted and incarcerated in a foreign jurisdiction have committed crimes in a foreign jurisdiction against foreign victims. They are being brought back to Canada in circumstances in which there may be victims in Canada who would somehow be affected. If I were acting for those victims in Canada, I would be happy to have them back, because they could actually be charged and punished properly in Canada for what they did. I don't see how that's a problem. I think it is helping victims to bring them back in those circumstances, not the reverse.

Also, I don't quite understand the philosophy here, because what you have are people who have been convicted in a foreign jurisdiction who are going to come back to Canada at some point in time anyway.

Mr. Brent Rathgeber: On point of order, Mr. Chair, this is not the time for debate. Mr. Kania has an opportunity to question the witnesses.

The Chair: It's Mr. Kania's time as long as it's relevant to the bill.

Go ahead, Mr. Kania.

Mr. Andrew Kania: Thank you, Mr. Chair.

I don't understand the philosophy of this, because you have criminals incarcerated in a foreign jurisdiction who are going to be brought back to Canada anyway.

Here's the point. I'm looking at page 4 of your presentation, where you say:

> As such, they will benefit from the various rehabilitation programs offered in our federal institutions, as well as supervision by parole officers following their release to the community. And, their foreign conviction will be recorded in the RCMP's criminal convictions database, commonly referred to as CPIC, which otherwise would not be the case if they were simply deported back to Canada.

I would think that for public safety benefits, it would be better to make sure that those persons actually have meaningful rehabilitation, which the government will no doubt ensure takes place in the massive prisons being built, and when they come back to Canada and are eventually released out into society because of this wonderful new rehabilitation, Canadians will actually be safer. Would that not make more sense?

Ms. Mary Campbell: The only comment I would make is again to bear in mind the enormous variance in fact patterns. I have seen files, for example, where the offender relocated to the United States, potentially for a fairly brief time, and in fact committed an offence in the United States against a family member and was incarcerated in the United States for that offence. The family has become estranged from the offender and has moved back to Canada.

So there's a situation where, indeed, the victim is not someone in the United States. In fact, it's a family member who is back in Canada and who came back for the specific reason of wanting to put some distance between themselves and the offender. I simply raise that again just to emphasize there's a wide variety of fact patterns.

● (1715)

Mr. Andrew Kania: Sure, but even in those factual circumstances in that entire example, you have a person who is in jail in the United States coming back and being put in jail in Canada. It's not like they're being brought back and you're saying, “Here you go, be released, and go mix with the victims”. That's not what's occurring. So how is this even logical or relevant?

Ms. Mary Campbell: Again, I can only say that for some victims, simple physical proximity, even though the person is behind bars and a brick wall, is a concern to those victims.

Mr. Andrew Kania: When they come back to Canada and they don't have rehabilitation, and they're released and they have no record, that's better for the victims...?

Ms. Mary Campbell: No.

Mr. Andrew Kania: That's right. It's not.

Do you want a minute, Mark? Go ahead.

Mr. Mark Holland: Look, the point that I'm having a problem with is that the government is consistently trying—Mr. Lobb is repeating it—to ascribe motive to people, as if somehow I care less about the safety of my children than you care about your family. Shame on you.

We can debate the merits of a bill. We can have a discussion about how best to create public safety. There are honest divisions about how we come to that.

But to try to say that any member of this committee somehow doesn't care about victims.... The only thing it described, Mr. Lobb, is that you have absolutely no other arguments to stand on.

The Chair: Thank you, Mr. Holland.

We'll now move to Mr. Gaudet.

[*Translation*]

Mr. Roger Gaudet: Thank you.

Ms. Campbell, you state on page 4 of your presentation that 1,557 Canadian offenders have been transferred back to our country, while Canada has returned 127 foreign national offenders from prisons here to their country of citizenship. Are you aware of the reasons for these transfers?

If I look at the number of immigrants welcomed to the country in the last 30 years and if I estimate the number at approximately 30,000 per year—I may be overestimating, or underestimating—, I see that the total is about one million. And only 127 people have asked to be returned to their country of citizenship. That intrigues me.

Could it be that they are fed too well in our prisons? I'm just asking. Do they enjoy more freedoms in our prisons then they would in their own country? I'm interesting in getting at the truth.

[*English*]

Ms. Mary Campbell: Again, without some systematic analysis, I'm not sure I can answer that for you. I would have to start by first asking this question, which I will undertake to do: do we know how many foreign nationals we have in our penitentiaries? Again, you have to bear in mind that some individuals may be in prisons without disclosing that they have citizenship in another country or indeed that they have dual citizenship with Canada and another country. So when we look at the figure that 127 foreign nationals have been transferred back, I think we do need to find out what the context is: 127 out of how many are here.

As to why many of them do not ask for transfers back, again I couldn't draw any firm conclusions without doing a bit more research on that. They may have in general quite short sentences and they're prepared to simply do their time and then leave at the end of it. I'll certainly look into it and get back with as much information as I can.

[*Translation*]

Mr. Roger Gaudet: As part of your research, I'd like you to find out how many were deported after being detained. I don't know if Mr. Laprade was the person who spoke about this earlier, but I consider that they were deported, rather than transferred.

[*English*]

Ms. Mary Campbell: That's right. It's parole for the purpose of deportation.

[*Translation*]

Mr. Roger Gaudet: I have nothing further. Thank you.

[*English*]

The Chair: There's no New Democrat here, so could I just ask a question on the initiation of this? In the existing act, nothing is going to change with this part, but because you need the three affirmations, is it generally, then, the case that the offender would initiate a transfer?

Ms. Mary Campbell: That's correct.

The Chair: Okay. So the offender initiates the transfer. In any of the 21 denials, would we assume correctly, then, that both of the others have made the request? The other government has said yes, they would like him transferred or they would allow him to be transferred, the offender has asked for a transfer, but then we have been the one who has denied. Would we assume that?

● (1720)

Ms. Mary Campbell: No. In fact, in discussions with our American colleagues, who are our largest partner, quite frequently, I understand, the offender makes the application, the U.S. reviews the application and denies right at that point, so the matter never comes to Canada for consideration. The U.S. is already doing some filtering, if you like, of the applications.

Some of the treaties—and Michel would know better than I do—require either the sending or the receiving state to make the first decision as between the two state parties. So there are some circumstances where the offender makes the application, it comes to Canada first to make its decision, and only then goes to the sentencing state to make a decision.

But no, the fact that we have an application from a Canadian abroad before us does not necessarily mean that the other country has also already agreed. It may well be they have not yet made a decision, and their decision may well be negative.

The Chair: Do we make the offender aware, through consular services or other means, that there is a possibility of a transfer? We assume somebody goes—

Ms. Mary Campbell: Yes.

The Chair: So that's up to us, then. We do that. Then they would apply. Is that just a verbal thing? Is it a paper they have to fill out? Is it a long form? How do they do that?

Ms. Mary Campbell: All of the above, Mr. Chair. Consular officials will meet with Canadians in prison abroad. They will review the program with them.

They will likely be provided with a copy of the booklet that is designed for offenders. It contains information about the program. It contains the statute. It contains an application form. The consular officials will inform the offender. Now, I mean, there is a process. The offender may apply. Part of that process that's reflected in here, of course, is that Canada will inform the offender of how the sentence would be administered in Canada, so that they can make an informed decision about the transfer.

There's quite a full process and a service that is provided to offenders.

The Chair: Mr. Davies, I'm going to give you three minutes. You weren't here when your time came. I will go back to you. Normally I would let the Conservative Party finish, but go ahead.

Mr. Don Davies: Thank you, Mr. Chairman. I apologize.

Is there any Federal Court decision that suggested that the criteria be changed from mandatory to permissive? No? Okay.

Second, you talked about following up where there's a difference between finishing a sentence in, let's say, the United States versus Canada. I would suggest that there's a clear advantage to finishing a sentence in Canada, which we've talked about: access to rehabilitation, parole conditions in the community, and the fact that we would know about the conviction.

I would suggest that those are clear indicia that would suggest it's preferable to have a person be transferred here rather than have the person come back across the border without us necessarily knowing. Is that a fair statement generally?

Ms. Mary Campbell: Generally. I think you were out of the room when I made the analogy with Mr. MacKenzie to—

Mr. Don Davies: Conditional release? No, I was here. I heard that.

Ms. Mary Campbell: Conditional release. Okay.

Mr. Don Davies: So I take it the answer would be yes. You would consider it generally preferable.

Ms. Mary Campbell: Generally.

Mr. Don Davies: You talked about a criminal network. If someone came back who had a criminal network, my understanding is that it likely would be, and in fact has been, a reason under the current legislation to deny a transfer of someone, under the threat to the security of Canada. That issue has come up. Is that not right?

I think what we're saying is that if you come back to a prison in Canada, what we're having difficulty understanding is how that's a threat to public safety, because you're coming back into a prison. So the only thing you could possibly constitute a threat to is other people inside the prison. One example you used, I think, was the criminal network.

But my understanding is that under the current criteria, that would likely be a valid reason to bar someone. The Federal Court decided, though, that when the minister made that decision, the only problem was that there was no evidence that this was the case. But the criteria of having a criminal network would likely be a reason to bar under the current legislation, would it not?

Ms. Mary Campbell: The wording that is in the bill I think provides more flexibility around that kind of decision-making. The factors that are currently in section 10 have been interpreted in a way.... Let's take, for example, paragraph 10(1)(a): “a threat to the security of Canada”. Fairly narrow limits have been placed around that phrase by the courts. Similarly, in paragraph 10(2)(a), on whether they likely have committed “a terrorism offence or criminal organization offence”, parameters have been placed around that by the courts. The effort in the bill is obviously to expand that somewhat.

● (1725)

The Chair: Thank you very much, Ms. Campbell.

Mr. MacKenzie, seeing we're coming feverishly close to 5:30, I'll let you conclude.

Mr. Dave MacKenzie: Thank you.

It's fair to say that not every Canadian citizen who is in custody abroad applies for a return.

Ms. Mary Campbell: That's correct.

Mr. Dave MacKenzie: I think that's an important part, because if I listen to my colleagues across the floor, they say we should bring all these people home for rehabilitation. On the other hand, we recently went through a thing where they claimed there was no rehabilitation in our system. If we're saying we should bring these people home for rehabilitation.... I think there's a fairly small number who in actual fact do apply to come back home, because perhaps a number of these people have been out of Canada for a long time and have no real ties to the country.

But there was another issue about how, if they were to come back, the authorities here wouldn't know about their records. But the vast majority, when they do come back, if they haven't applied for a transfer, are going to be deported from that country.... Is that fair?

Ms. Mary Campbell: Yes.

Mr. Dave MacKenzie: Once they're deported to this country, the authorities at the border know why they're being deported, so it's not a surprise to the Canadian authorities that they're coming back into the country under a deportation order.

Ms. Mary Campbell: That's correct.

I would just reiterate what Mr. Laprade said earlier. They would have the information, but it would not be reflected on their CPIC record in the same way as it would be for someone coming back under a transfer arrangement.

Mr. Dave MacKenzie: That's all right, but the police authorities, the law enforcement, do what's called an NCIC check, so they are aware, particularly with our biggest partner to the south, where the vast majority of these people are, that there is such a record in existence in that country.

Ms. Mary Campbell: That's correct.

Mr. Dave MacKenzie: So for some of this stuff, I mean, the courts have been ruling on these transfers since 1978, and I'm sure there has been a number of them. We should not focus on one or two more recent ones. I think it is fair to say that there is an effort to make this thing more prescriptive on what the minister should take into account, some of it based on what the courts have said, and certainly some of it on what society demands more of today.

It would be easy enough not to do anything, but I don't think that would fix the ills of the current system. If we don't change anything, what would happen?

Ms. Mary Campbell: Again, I'm not in a position to speculate. We have had a number of court decisions, the government felt that it was important to respond to those situations, and the law continued to evolve. It's an effort to keep up with that.

You'll recall, of course, that in Bill S-2, the national sex offender registry bill, there is a provision that requires returning sex offenders to disclose the fact of their conviction abroad and to register. There are changes to the law being made on a number of fronts to address the issue of society's greater mobility, greater than what existed 20 or 30 years ago.

Mr. Dave MacKenzie: Sure. I think it's fair to say that if the bill is not changed, there will still be transfers, as there have been since 1978, and there will still be denials.

The Chair: All right.

Thank you very much for coming to the meeting today. We appreciate your testimony on this bill. We also thank you for enduring the first little bit where we had to do some committee business.

The meeting is adjourned.

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