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# Standing Committee on Citizenship and Immigration

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EVIDENCE

**Wednesday, May 9, 2012**

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**Chair**

**Mr. David Tilson**



## Standing Committee on Citizenship and Immigration

Wednesday, May 9, 2012

•(1210)

[English]

**The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Okay, we are going to call the meeting to order.

This is the Standing Committee on Citizenship and Immigration, meeting 42, Wednesday, May 9, 2012. This meeting is televised.

The order of the day, pursuant to the order of reference of Monday, April 23, 2012, is Bill C-31, an act to amend the Immigration and Refugee Protection Act and other acts.

I appreciate, Ms. Sims, that you've indicated you wish to address the committee, but before you do, I just want to say a couple of things.

There are 83 amendments, just to encourage you. There are bells ringing at 5:30. There are four votes, and the votes start at 6 o'clock.

The second part of today's meeting is scheduled to go until 7:30, so I need some guidance. We obviously will have to rise at 5:30. We can just not come back, or we can come back and sit for the time lost. So I'll leave you with that. I need some guidance on that. This would be for the second meeting, but I'll need some help on that as to what you want to do.

There will be a number of staff from the departments sitting in, and there are three departments: public safety, immigration, and transport, I believe. Someone is nodding his head; there's one person from transport. If we have technical questions on this legislation, the members of the departments are here to assist us, and four of them are sitting at the end of the table now.

Go ahead, Ms. Sims.

**Ms. Jinny Jogindera Sims (Newton—North Delta, NDP):** Chair, I have two things.

It would be our position that we should extend adjournment time today, so we do not lose the time. We have very limited time to do clause-by-clause. That would be our suggestion.

And I do, as I said, have a procedural motion.

**The Chair:** Let's deal with the first item first.

Do we have to have unanimous consent to go past 7:30?

It appears we need unanimous consent.

**Mr. Rick Dykstra (St. Catharines, CPC):** Could I hear what the routine motion actually says?

**The Chair:** She hasn't spoken on that yet. The motion....

**Mr. Rick Dykstra:** She has, actually.

**The Chair:** Well, she hasn't, because I stopped her. The issue is what we do tonight. Do we come back?

**Mr. Rick Dykstra:** That's what I'm talking about.

**The Chair:** The issue is that Ms. Sims has indicated that the official opposition would be prepared to come back after the vote for whatever time was lost.

**Mr. Rick Dykstra:** I was asking, Chair, to hear what the routine motion on the time allocation for the two days of clause-by-clause said, because it may provide us with a little guidance on this issue.

**The Chair:** It's not a routine motion; it's a motion the committee made in which it was agreed we would sit on Wednesday, which is today, from noon until 2 o'clock and from 3:30 until 7:30. So if we come back we would be sitting past 7:30, and we will need unanimous consent to change that. So I need—

**Mr. Rick Dykstra:** How much time are you talking about, approximately?

**The Chair:** I have no idea. You know what these votes are like.

Mr. Lamoureux.

**Mr. Kevin Lamoureux (Winnipeg North, Lib.):** Mr. Chair, I know that the original thought was that we would have today and tomorrow to go clause by clause. Did we put any limitations as to tomorrow after midnight, if it hasn't passed?

**The Chair:** No. It ends at midnight. It ends at 11:59.

**Mr. Kevin Lamoureux:** At 11:59. Now, at that time, was it decided that all questions then would be put?

**The Chair:** Yes. It says "...the Chair shall interrupt debate and put the question on all remaining clauses and amendments, as well as all other questions necessary to dispose of this stage of the bill".

•(1215)

**Mr. Kevin Lamoureux:** I can't recall. Was that in camera, that portion?

**The Chair:** It was a subcommittee report that was adopted by the full committee. Someone else must have been in the chair. Maybe you. I wasn't here. Ms. Sims was.

I need guidance as to what you want to do tonight.

**Mr. Rick Dykstra:** You'll get unanimous consent for an additional 60 minutes, or whatever it takes, whatever the amount of time was up until an additional 60 minutes. So if we have four votes and it takes 38 minutes, we'll add 38 minutes to the 7:30. But if for some reason it ends up taking two and a half hours, we're only going to add a maximum of 60 minutes. That's what we'll agree to unanimously.

**The Chair:** Agreed?

**Ms. Jinny Jogindera Sims:** Agreed.

**The Chair:** Mr. Lamoureux?

**Mr. Kevin Lamoureux:** Yes.

**The Chair:** Done.

Ms. Sims, you still have the floor.

**Ms. Jinny Jogindera Sims:** Thank you very much, Chair.

I'd like to put this motion on the floor. I move that notwithstanding the committee's decision of April 26, 2012, clause-by-clause study of Bill C-31 should be suspended to allow for the full coming into force of the Balanced Refugee Reform Act.

I'd like to open, if I may. Can I open now, Chair?

**The Chair:** Can I just have the committee's indulgence for one minute?

**Ms. Jinny Jogindera Sims:** Yes. Sorry.

**The Chair:** We have a technical problem, because we have a motion I was just referring to, which the committee adopted, which spelled out the hours for the debate of clause-by-clause of Bill C-31. To change that, it's the same as asking for an extension of time.

We will need unanimous consent. Otherwise, that motion is out of order.

**Mr. Kevin Lamoureux:** Mr. Chair, I'm quite comfortable with at least allowing that issue to be debated.

**The Chair:** I'm not going to allow it to be debated. I will need unanimous consent to allow it to be debated. I'm going to take the position that this time was set for Bill C-31. That's the motion.

We just went through that exercise a few seconds ago on whether we would come back tonight, and that required unanimous consent. Unanimous consent has been given on terms.

I take the position that this motion is out of order until we have disposed of Bill C-31, which was made pursuant to an order of this committee, and to change that—

**Ms. Jinny Jogindera Sims:** Chair, I would like to challenge the chair.

**The Chair:** To change the order of this committee, we need unanimous consent.

The chair has been challenged.

**Mr. Rick Dykstra:** Let's see if you get unanimous consent.

**Mr. Kevin Lamoureux:** You're not going to give it.

**Mr. Rick Dykstra:** No. If we're going to start changing the routine proceedings, I've got a couple I'll move myself.

**The Chair:** The chair has been challenged.

All those in favour of the chair's position?

**Ms. Jinny Jogindera Sims:** May I state my challenge?

**The Chair:** You've just challenged my ruling. You want to talk about it?

**Ms. Jinny Jogindera Sims:** My understanding is that under Robert's Rules of Order you actually get to state what your challenge is, and I really want to proceed quickly.

**The Chair:** I'm not going to let you do that, because I made a ruling and you've challenged it. I don't know what else we would go on.

Meanwhile, it's a quarter after twelve, and we can go on forever around technical procedures if you want to.

**Mr. Kevin Lamoureux:** The question is, can she challenge?

**The Chair:** Well, she can, actually. I've ruled—

**Mr. Kevin Lamoureux:** She can challenge. Now we're challenging the ruling of the chair and I don't think that's debatable.

**The Chair:** That's right.

Shall the decision of the chair be sustained?

*(Chair's ruling sustained)* [See *Minutes of Proceedings*]

**The Chair:** Are there any other preliminary matters?

Mr. Lamoureux.

**Mr. Kevin Lamoureux:** Mr. Chair, I'm wondering if it would be okay for us to allow for some opening comments in regard to the bill before we get into the clause-by-clause by whomever would like to provide opening comments.

• (1220)

**The Chair:** I'll agree to that.

Who wants to go first?

Ms. Sims, you asked for it. Or will it be Mr. Lamoureux? You asked for it, you can go first.

**Mr. Kevin Lamoureux:** I'm quite flexible. I'm more than happy to go first, Mr. Chair.

I did think that it was important, just before we get under way with the clause-by-clause, to highlight some of the presentations that were made and some of the concerns that we have expressed.

We understand that the Minister of Citizenship, Immigration and Multiculturalism did have a press conference at which he made some fairly substantial changes. I thought it might have been appropriate for the minister to come before the committee—given that we're going to be going into clause-by-clause—to indicate, as a courtesy, what sorts of changes he would like to see and maybe provide the justification up front with us. If he could take the time to present them to the media, he could have provided the courtesy of doing likewise here for the standing committee.

Having said that, I think we have been fairly clear on concerns we've had with regard to the Liberal Party of Canada's position in regard to the presentations that were made. All in all, there were very excellent, high-calibre presentations. I want to pick up on a few of those points.

We still believe the idea of mandatory detention is just wrong. This is something that will be challenged in our Constitution and will be challenged successfully.

With regard to the safe country list, we believe the government was wrong to change what was in the previous legislation, which would have had a panel of experts bring forward a recommendation to the minister. We believe the minister would have been best advised to go back to that system, for which there was unanimous support from the House. So we believe the government was wrong to do that.

With regard to concerns with respect to families, when we talk about mandatory detention, we're going to be dividing up families, we're going to be preventing families from being able to be reunited. We heard presenter after presenter talk about how that is damaging to the family and is also going to be costly to our system. The idea of having a ten-year-old being in foster care while parents are locked up in a detention centre is just wrong. The idea of a refugee being determined to be an irregular refugee and then put into detention, and then, after being declared a refugee, having to wait five years before they will be able to sponsor their spouse or their child is again just wrong. We look to the minister to be able to address that particular issue.

We're concerned with regard to the whole issue of this two-tier system that's being set up for refugees. I think that if you take a look at the bigger picture here, Mr. Chair—and we've had a few presenters who made comment on it—worldwide there are over 10 million refugees, people who would like to be able to leave their countries for whatever reason—over 10 million. Canada has had a fairly decent record in terms of being able to play a leadership role in dealing with the whole issue of refugees on a worldwide basis. This particular bill, if it passes without amendments, will greatly diminish and tarnish our record. It takes away our ability to provide that leadership. So when we look at it, there are 10 million refugees worldwide, and we get 15,000, which is a fairly significant number, but there are only 60,000 worldwide that actually get accepted.

We are taking away some of our responsibility in terms of being able to address that refugee problem throughout the world by bringing in legislation that in essence establishes a two-tier system. We need to be very clear on that fact. A refugee who flies in through the Toronto airport and a family that might appear via another means, at a different type of port of entry, are going to be treated differently, and the government needs to acknowledge that. We believe that it is against UN resolutions, and that through time that is going to be well demonstrated. The direction we are moving in on that is just wrong.

• (1225)

We're concerned with respect to the timelines that are being talked about. This is something about which presenter after presenter talked at great length. How can you expect someone in 15 days to prepare themselves or get themselves into a position in which they can feel comfortable and know that they're going to have a chance to explain the situation?

Many of these individuals are not afforded the opportunity to come to Canada with the background information that is required, nor to even be able to substantiate who they might be, and yet we're

expecting them to be able to get everything in proper order, including dealing with issues such as where they will be sleeping, how they are going to be fed, identifying how they're going to be able to get representation, and what kind. In many cases, because of this time restriction they won't even be able to get any form of representation. What impact is that going to have, Mr. Chair?

Those are the types of concerns that I believe at the end of the day are going to deny genuine refugees the opportunity to come to Canada.

When we talk about mandatory detention for two or more, as much as we would love to see mandatory detention disappear completely, the idea of increasing it to a more reasonable number.... I might suggest 5,000, but if I say 5,000 it would no doubt have no chance at passing. But at the very least, to say two I believe is just compounding the problem of mandatory detentions in the first place.

We have refugees who have been deemed refugees. They are going to be in a position in which they're not even going to be able to travel to a third country to meet with a family member, which raises a lot of concerns. This is something completely new, Mr. Chair, that the government is doing here, which is going to have a profound impact upon families.

My suggestion is that as we go through clause by clause, Mr. Chair, we take into consideration the real impact this is going to have on refugees, here in Canada and abroad, and how this whole issue of Bill C-31 is going to impact Canada's reputation as a world leader in dealing with refugees in a fair way.

I think that if you canvassed Canadians as a whole, you would find wide support for recognizing that we have a role to play in the whole refugee area of immigration, Mr. Chairperson. At the end of the day, what we want to see is a system that not only processes in a reasonable timeframe, but that allows us to be able to say that it is fair, that there is such a thing as judicial overview. This legislation does not allow for genuine judicial overview, in many different ways, Mr. Chairperson. That's why I think that it's critically important and of great value for the committee as a whole to be reviewing it.

Ms. Sims from the New Democratic Party made the suggestion that we recess this particular committee. If the will of the Liberal Party were able to prevail in this committee, I can tell you that we would allow the previous legislation to take effect and over the next number of months would review exactly what it is that Bill C-31 is doing and how we might be able to improve upon it so that we were being fairer to refugees and were building the relationship that Canada has among countries throughout the world and building the whole leadership role that we could be playing.

That's why I think we're maybe being a little too quick in wanting to pass things through. I realize that there was a decision by the committee a few days back saying that by midnight tomorrow things have to pass their way through. But as you say yourself, Mr. Chair, with the unanimous support of the committee.... And I can tell you that the Liberal Party's position would be to allow for proper and adequate time to ensure that we get this thing right.

•(1230)

We owe it to not only today's refugees but to future refugees that we get this system right. We do feel that on many fronts, most of which I've already highlighted.... I highlighted the primary concerns in regard to this bill, Mr. Chairperson, and ultimately I believe we should be seeing where the government feels.... That's why I thought it would be great to have some opening remarks on the issue.

I don't know, because I was in a caucus meeting prior. All I've been told is the Minister of Immigration had a press conference. Yesterday, because of a courtesy, we had asked that people submit amendments in advance so we had a sense of some of the amendments the government had provided. I don't know if everything the minister had commented on is all pertaining to those amendments. Are there other things he made reference to? We don't know that. That's why I thought it would be most appropriate to have some opening remarks.

I'm very much interested in hearing about what the core feelings are from the New Democrats in regard to this particular bill. I think the New Democrats and Liberals in some ways support looking at some of the amendments. You can see we're both thinking alike when it comes to the issue of mandatory detention, at least in good part, it would appear.

We're both thinking alike in terms of why the government said 16 years old as opposed to 18 years old, the age of majority in terms of detention. So if you're 17 years old the government feels they should be put into a detention centre. Both opposition parties have recognized that's wrong. It should be bumped up to 18.

I don't know if the minister has changed his mind on that particular point, but I think there is value for the government to change its mind. I think there are common grounds in looking through some of these amendments.

There might be one or two others we might want to throw in that I didn't get to see in the booklet that was circulated, Mr. Chairperson. But I think for the first time what we saw was a sense of cooperation from all three political parties here by submitting the amendments in advance. The next best thing would have been to have some dialogue on those amendments prior to our even going into the clause-by-clause, because maybe there is some merit in terms of Mr. Dykstra saying we could be sympathetic to this, given the NDP and the Liberals are okay with the 16 to 18 bit. To have that sort of dialogue I think would have been healthy for the committee.

When I sit back and review the process, generally speaking, we had concerns right out of the get-go, the get-go being when the bill was introduced in second reading when the government made the determination they had to bring it in through time allocation. We did have some concerns in regard to the number of witnesses, but that was agreed upon that we would limit the witnesses. I do appreciate the fact that I was able to get the number of witnesses we were able to get. We could always get more. We could always use more witnesses, Mr. Chairperson, but the witnesses themselves were of very high calibre. It was, I thought, very beneficial.

There are a number of comments they made that really come to mind. I realize I might be getting a little long-winded here, Mr. Chair, but there were some more interesting ones.

For example, when I had posed the question in terms of the two-tier refugee to what was happening in Germany, they made it very clear there is no two-tier. All refugees are treated the same.

When we had issues related to Australia, we find out through the committee meetings that these massive detention centres are very costly and it's not healthy for the families.

The government would ask question after question in regard to the cost of refugees. I believe every Conservative member of this committee made reference to the cost factor. Do you recognize the cost? We have to do this for the cost. What came out of the committee was the fact of the additional costs that are going to be incurred because of the separation. By putting someone into detention, there's going to be the potential for long-term health care ramifications and the cost to health care. Not only should Ottawa be concerned about this, but all provincial governments should be concerned about it. Health care is the greatest single expenditure.

•(1235)

I know that in the province of Manitoba mental health is one of the growing areas of cost. Here we are, saying that we are going to put these people into detention centres. I'm thinking of the whole Australia situation, Mr. Chairperson, in which they talk about those costs. It wasn't just the building of prisons—or detention centres, because I know the government is sensitive to “prison” versus “detention centre” and trying to pick up the differences between the two—but there is a significant cost.

If you put an eight-year-old child into a foster care home and then have mom and dad in a detention centre and you keep them apart for a year, and then after they've been apart for a year they're reunited, you can't tell me that there is not going to be a cost. I don't know whether the government has even recognized that cost factor, Mr. Chairperson.

I wasn't at the minister's press conference, so I don't know whether he has dealt with that particular issue, Mr. Chairperson. I hope he has, because there is a significant cost difference when you have that sort of separation.

I get back to the process issue, Mr. Chair. The reason I bring it up is that I thought the time allocation in second reading was not appropriate. I honestly thought there should have been more time for all members of Parliament to contribute to the debate before it came to committee.

Then once we got to committee, the quality of the presentations was excellent. I suspect that's why we have so many amendments coming forward to the bill. But now, because of the opposition's maybe being a little too generous, we put in a time allocation ourselves rather inadvertently, saying that it has to pass by Thursday night. With hindsight, I think that may have been a mistake, Mr. Chair. I think maybe what we should have done is allow ourselves to continue—

**The Chair:** Try to stick to the bill, Mr. Lamoureux.

**Mr. Kevin Lamoureux:** Yes. Thank you, Mr. Chairperson.

It's because—

**The Chair:** On a point of order, I'll hear Mr. Menegakis.

**Mr. Costas Menegakis (Richmond Hill, CPC):** Mr. Chair, initially Mr. Lamoureux asked whether we had some time for brief opening remarks. Is there a time limit on this?

**The Chair:** No.

Thank you, Mr. Menegakis.

Mr. Lamoureux, please continue.

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

I didn't mean to be too extended in my comments. I just thought I would take advantage of the opportunity to express myself, because on many of those presentations I only had five minutes. This allows me to air a little bit of frustration, and I'm sure my colleague from across the way can sympathize with why it is that we are so concerned about Bill C-31.

The point is, Mr. Chairperson, that in trying to address the legislation and in listening to all of the presenters who made presentations, I have had the opportunity to discuss with members of my own Liberal caucus. There are a number of concerns that we have raised in regard to the bill. What I did was highlight some of the major concerns.

I have before me a series of amendments. I don't necessarily want to go through all of the amendments, because as we go clause by clause we'll be afforded the opportunity to talk about those amendments. But the concern is.....

To the credit of the NDP, I think Ms. Sims recognized it right up front by saying that we need to set aside some additional time so that we can ensure that we are afforded ample opportunity to thoroughly discuss each amendment. I think that would have been a very good motion, had it been allowed to go ahead, Mr. Chair. It's not necessarily a reflection upon your particular ruling—I abstained from that particular vote, I must say—but I think there would have been some merit to it.

There was one in particular that, when I was looking through the bill late last night—

• (1240)

**The Chair:** Mr. Lamoureux, I have no problem with your speaking generally about the bill. I think when we get into specific amendments you should wait until that clause is called before you start commenting on that particular clause or that particular amendment. The purpose of what you're doing now is to make some introductory comments. Those comments are in order. But you're now moving into amendments, and I don't think that's appropriate at this time.

**Mr. Kevin Lamoureux:** Okay. Let me just wind up, then, Mr. Chairperson, on a point.

In going through the amendments that I did, as I pointed out, I noticed there were some amendments where there seemed to be a general consensus between two parties. I think there was even a consensus I had noted with all three political parties.

I want to approach the committee and the clause-by-clause with an open mind. There will be some that we'll want to withdraw in terms of some of the amendments that we had put forward. There might be one or two that we would like to add to it, only because of timing we

weren't able to quite get those in. I'm hoping I'll still be afforded the opportunity to be able to put those in.

I look forward to being able to get into the clause-by-clause, but I would encourage all members to seriously look at any sorts of limitations we might have put in, especially given that we understand the minister is prepared to make some changes to the legislation.

I look forward to the dialogue and other opening remarks that might be there.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Lamoureux.

Ms. Sims.

**Ms. Jinny Jogindera Sims:** Thank you very much.

It's not going to come as a surprise to anybody around this table that the NDP is very, very concerned with the kind of speed with which we're going through this legislation. I don't know about the rest of my colleagues, but after hearing the hours and hours and days and days of testimony, there is a lot for us to review. It's not only the verbal testimony we heard, but the very thick briefs that were submitted. To read and digest all of that before we get into clause-by-clause, as you can imagine, all our brain cells need a little bit more time. That is why I brought that motion forward, or tried to, to say that we should suspend. It was not to say that we should never come back to it; it was to suspend.

New Democrats are concerned about the lack of time we're going to have. This was also eloquently stated by other witnesses, such as Peter Edelmann, from the National Immigration Law Section of the Canadian Bar Association. On May 1 he said: "What is of particular concern is the speed with which this complex legislation is being passed without the time to properly study it." I really want to stress that: "without the time to properly study it".

We're being asked to pass a bill on a very short timeline, and we don't know how many more unintentional consequences there will be. And they are in this bill. No one that I'm aware of has been able to study this bill in depth in terms of all of the unintended consequences. We simply haven't had time to study in depth this piece of legislation. Never mind not having studied the legislation, we've had witnesses—legal, community groups, refugees—who have come to present to us, and I don't think we've had adequate time to give all of that testimony due consideration either.

Notwithstanding that, there are key areas in this bill we have major concerns with, but as the official opposition we want to make things work. We are not here to try to slow things down. As a matter of fact, we can't wait to get to clause-by-clause, so I'm planning to keep my comments fairly brief. We do want to make things work. That's why we have submitted 20-plus amendments. We will be looking forward to seeing the amendments. We've seen them, actually, but we look forward to hearing the rationale. And if there are additional amendments from either the Liberals or the Conservatives, we will give them due consideration. We want to make this work for some of the most vulnerable people who are going to be arriving on our doorstep, and we want to ensure that they are granted due process.

Some of our key concerns have been highlighted and corroborated by many, many witnesses. I wish I had the time to read into the record all that they said, but we don't. These concerns include:

—The provision that gives the minister the power to hand-pick those countries he thinks are safe. This would do away with an independent panel of experts.

—The ability to detain refugee claimants for a year without review. Once again, that causes us major, major concern, because not only are we looking at contraventions of our international obligations, but of our own charter and constitution and habeas corpus.

—Measures to deny some refugees access to the new refugee appeal division, which, once again, is simply an anathema.

—A five-year mandatory wait for bona fide refugees to become permanent residents and reunite with their families.

Once again, I want to stress that one of the things we've often heard is about the security of Canadians, about protecting Canadians. Bill C-11, the Balanced Refugee Reform Act, agreed to by the parties and praised by the current minister, actually addresses those concerns, because current legislation allows for identification and security checks to be done before people are released.

With all of that in mind, one of the things we are very, very committed to and want to appreciate is that there has been some movement from the minister. We saw a little bit of it in the clause, and from what he said today we're looking forward to more. We will be looking at his proposals closely at committee and taking them very seriously.

• (1245)

That said, we've also heard overwhelmingly from witnesses in the past two weeks that this bill is fundamentally flawed. Tweaking it is not going to fix it. This bill does nothing to prevent human smuggling, since our punitive measures for smuggling are already there. What it does is punish yet again the most vulnerable people arriving on our doorstep.

We have a bill in place that could actually become operational. We could take a look at Bill C-11 over a longer period, study it, and make sure that we do it right. It's in all our interests to make sure that we do all our legislation right. We will be looking at all of the measures. My colleague from the Liberal Party clearly articulated the concerns that we have expressed, and that witnesses have expressed as well. On this piece of legislation, we need to take a break. We need to suspend and make sure that we do it right.

I want to appeal to my colleagues across the way. Let's take a suspension, let's operationalize Bill C-11, and let's do this right.

**The Chair:** Thank you.

Mr. Dykstra.

**Mr. Rick Dykstra:** We will enjoy the opportunity to get to clause-by-clause and work through this process. We spent hours and hours listening to witnesses. It's time we start to act.

**The Chair:** We will start.

Clause 1 of the bill is postponed until the end, pursuant to Standing Order 75(1).

We will move to clause 2.

Mr. Lamoureux.

(On clause 2)

• (1250)

**Mr. Kevin Lamoureux:** In my opening remarks I made reference to one or two amendments that I would like to submit. This is a fairly straightforward amendment. I would move that Bill C-31, in clause 2, be amended by replacing lines 9 and 10 on page 1 with the following:

“designated foreign national”—

**The Chair:** Hold on just a second. Do you have that in writing?

**Mr. Kevin Lamoureux:** Yes, I do. I'll provide a copy.

**The Chair:** Mr. Lamoureux, I don't know how often this is going to happen.

Mr. Dykstra, I haven't forgotten you.

I expect other members of the committee are going to want to see this in writing before we go anywhere. We're going to suspend while we do that.

• (1250)

(Pause)

• (1255)

**The Chair:** Okay, we'll reconvene.

Mr. Lamoureux's amendment is perfectly in order. It is perfectly in order to make amendments from the floor. In the future, so that this doesn't happen again, I just ask my colleagues to make available 25 copies to the clerk, if you decide to do that.

Mr. Dykstra, on a point of order.

**Mr. Rick Dykstra:** I have heard from Mr. Lamoureux, but I just want to confirm that this will be the only additional non-submitted amendment that will be moved.

**The Chair:** I just chair the meetings. It's perfectly in order.

Mr. Lamoureux, you have the floor.

**Mr. Kevin Lamoureux:** Thank you, Mr. Chairperson.

To answer the question Mr. Dykstra has put forward, this is the only one I anticipate. I don't know what else the government might be introducing, and I don't know quite how the party would respond to it, but this is the only one that's actually planned, and it was planned on purpose, Mr. Chairperson, at this particular point.

Do you need me to read it into the record?

**The Chair:** Please do.

**Mr. Kevin Lamoureux:** Mr. Chair, I move that Bill C-31 in clause 2 be amended by replacing lines 9 and 10 on page 1 with the following:

“designated foreign national” means an individual who arrives in Canada as part of a group of 5,000 persons or more and who becomes a designated foreign national in accordance with subsection 20.1(2).

May I speak to the motion?



**The Chair:** You may, sir.

**Mr. Kevin Lamoureux:** Thank you, Mr. Chairperson.

I guess the reason for this particular motion is to clearly illustrate, by picking 5,000—because even when I made reference to 5,000, you could hear a little bit of a gasp, I guess—that there are those in Canada, and in particular the Liberal Party, who just do not support the establishment of two tiers of refugees.

We believe that the whole idea of designating is wrong—two people come into the country and they can be designated, and that sets them into a totally different stream; they will be treated differently. We believe that is wrong. There is only one refugee.

If by chance we get a boatload of 5,000 people arriving, well, one can make that determination at that point, I guess. Here it's more just to illustrate for us by making this amendment that from the Liberal Party's perspective there is only one class of refugee.

Presenter after presenter made it very clear that this is in Canada's best interest.

That's the essence of the motion. If you support Canada having one level of refugee, then I suggest you vote in favour of it.

• (1300)

**The Chair:** Is there further debate?

Mr. Dykstra and then Ms. Sims.

**Mr. Rick Dykstra:** I will let the committee know that we on the government side do not intend to speak to every single amendment the opposition has put forward. They've for the most part provided all of those amendments in advance, as per the agreement, so we will not need to speak to all of the amendments.

I do have to comment to Mr. Lamoureux, though, that the official position of the Liberal Party of Canada is to encourage would-be refugees, or those seeking asylum, to gather together 5,000 individuals to get on these dangerous, decrepit ships to come to Canada. That is shocking.

I now understand why you took so long in your opening remarks, sir. I cannot believe that you would encourage those seeking asylum to gather together in the thousands to come across to Canada. That's shocking.

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** The NDP's position is that we are not supportive of two categories of refugees. We believe the current legislation, which was Bill C-11, allows for the government to identify and do security checks. We feel that is adequate.

**The Chair:** Mr. Lamoureux.

**Mr. Kevin Lamoureux:** To respond to the concerns expressed by the Conservative Party, Mr. Chairperson, we don't believe that a boatload of 150 people, which might occur twice in a decade or whatever, should be treated any differently from a refugee who would come in via a plane, in the sense that the current system has worked, and Canada Border Services Agency has made it very clear that the current system to be able to detain an individual, whether they come in as two or 500, or whatever the number might be, has proven itself to be very effective.

This highlights the fact that it is clearly a Conservative government opinion that they need to actually bring in this whole mandatory detention concept and ability to designate those people, which then in essence establishes two types of refugees.

I appreciate the member's comments.

(Amendment negated)

(Clauses 2 to 4 inclusive agreed to on division)

(On clause 5)

**The Chair:** Clause 5 is the first of the amendments. Just so you understand it, the clerk has put down the order. You'll see there's an NDP amendment and then a Liberal amendment, which cover the same item. We take them in the order they arrived to the table, so the NDP is first. The Liberal motion would not proceed if it's defeated.

Ms. Sims, you have the floor.

**Ms. Jinny Jogindera Sims:** Mr. Chair, this amendment removes the restriction—

**The Chair:** Could you read the amendment for the record, please?

**Ms. Jinny Jogindera Sims:** Okay.

**The Chair:** A point of order, Monsieur Giguère.

[*Translation*]

**Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP):** Could the interpreters be given a copy of the amendments?

[*English*]

**The Chair:** All right.

Sorry, Ms. Sims. Could you start again, please?

• (1305)

**Ms. Jinny Jogindera Sims:** I move that Bill C-31 in clause 5 be amended by replacing lines 3 to 17 on page 2 with the following:

(1.1) A designated foreign national whose identity has not been established or in respect of whom the minister has reasonable grounds to suspect that in relation to the arrival in Canada of that foreign national there has been, or will be, a contravention of subsection 117(1) for profit, or for the benefit of, at the direction of, or in association with a criminal organization or terrorist group may not make an application for permanent residence under subsection (1).

Mr. Chair, this amendment removes the restriction on designated irregular arrivals from applying for permanent residence on application before entering Canada, and therefore from sponsoring their families for five years, by limiting that restriction to those who are not yet identified or for whom the minister had reasonable grounds to believe that there may be security problems.

**The Chair:** Debate?

Mr. Dykstra and then Monsieur Giguère.

**Mr. Rick Dykstra:** Chair, I was actually rather shocked to see this amendment. I'll explain a couple of reasons why.

First, one of the issues the NDP and the Liberals in concert had argued was that the legislation we're proposing under Bill C-31 would somehow give a Minister of Citizenship, Immigration and Multiculturalism unfettered access or unfettered power to make decisions, which of course it does not do.

That's exactly what this amendment does, if you read the first part of it, where it says "a designated foreign national whose identity has not been established or in respect of whom the minister has reasonable grounds to suspect". That's "reasonable grounds to suspect". So under this amendment we would basically give the minister the ability, virtually without exception, to rule on each one of these individuals who is attempting to come to Canada vis-à-vis asylum. He or she could designate.

It's too far-reaching in terms of the authority it actually gives the minister. I find it ironic that I'm suggesting here that the NDP is pretty much giving the Minister of Immigration.... I'm actually tempted to convince my colleagues in government to support this, because you basically give the minister uniform authority to make a decision on almost every single person who comes into the country, at his or her discretion. All you're establishing under this amendment is reasonable grounds and suspicion, which is much stronger in the clause the way we have it set out.

Furthermore, if you go to the final part, where it says that "in relation to the arrival in Canada of that foreign national, there has been, or will be, a contravention of subsection 117(1) for profit,"—now listen to this—"or for the benefit of, at the direction of, or in association with a criminal organization".... Each one of these individuals or families that is on a ship that is coming to Canada will have been in association with a criminal organization. In fact, some of those criminals may actually be on the ship, so they would be deemed to be in association with them.

I would strongly recommend that the NDP withdraw this amendment. I'm happy to ask ministry officials to comment. What we're doing in terms of the five-year ban is absolutely nothing in comparison with what this amendment would actually do.

You want to talk about setting two tiers, Mr. Chairman. We will not be setting two tiers here. We'll be setting two cliffs, one where 99.5% of the refugee applications come through, and the other will be so far down from that in terms of equality that....

It's fascinating, after hearing everything the NDP has said on this issue, that they would reach to this extent to use words like "suspect" and "reasonable grounds" and "in association with a criminal organization".

Perhaps I'll ask Ms. Irish to comment on the amendment, if she could.

•(1310)

**Ms. Jennifer Irish (Director, Asylum Policy and Programs, Department of Citizenship and Immigration):** We'd be pleased to answer any technical questions related to the amendment. We do find it a little bit confusing the way it's worded, but we'd be prepared to answer any questions if there should be particular technical issues that need to be brought forward.

We would like clarification through you, Chair, of some of the intentions of the bill, as it seems to imply that anyone who is designated on arrival would have the penalty of no permanent residence forever.

**The Chair:** Thank you, Ms. Irish.

I think it's unfair to ask members of the department to comment on whether any amendment from either side is right or wrong. I think it's fair to ask the department to perhaps explain the effect of an amendment for either the government or the opposition, but I don't think we should be putting the department members in the position of suggesting an amendment is good or bad.

I think that's what you were doing, Mr. Dykstra.

**Mr. Rick Dykstra:** That certainly was not my intent. My question to Ms. Irish was simply to comment on the bill, not to determine whether what I said was correct or not. Those are my feelings. I respect, in fact, that the answer she gave was not in relation to my comments but was referring to the NDP.

The only other point I would make here, Mr. Chair, is that under the current legislation, criminals are already inadmissible into the country. So the only thing I did not speak to was that not only is this a very controversial amendment, which is completely out of line with what the government is trying to accomplish—and to be honest, I believe what the NDP should actually acknowledge they don't agree with—but in fact criminals are not admissible into the country under the current legislation.

**The Chair:** Thank you.

Monsieur Giguère.

[*Translation*]

**Mr. Alain Giguère:** Mr. Chair, our amendment essentially aims to eliminate the safeguard clause regarding foreigners who arrive irregularly. Mr. Dykstra talked about national security requirements, but those requirements are practically a throwback to the War Measures Act of 1970. You have the power to punish people, to incarcerate them, to diminish their rights, based exclusively on national security requirements, which you yourselves establish.

We think that, if those people are recognized refugees, they should have the same rights as all other recognized refugees. Even UNICEF, which can certainly not be accused of supporting terrorism, basically says that your safeguards—in other words, the creation of two refugee categories—are unacceptable. That is what our amendment addresses. We certainly do not want the War Measures Act to make a comeback.

[*English*]

**The Chair:** Mr. Lamoureux.

**Mr. Kevin Lamoureux:** I pass.

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** I want to once again state our opposition to designating asylum seekers or refugees who come into the country. When you look at this amendment, it's "a contravention of subsection 117(1) for profit, or for the benefit of", and I think it stands on its own.

•(1315)

**The Chair:** Thank you.

Is there any further debate? No?

(Amendment negated)

**The Chair:** Mr. Lamoureux, your amendment is slightly different, so you may proceed.

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

Did you want me to read the entire thing, Mr. Chair, or can I just consider it taken as read?

**The Chair:** That's a good point. You all have copies of them. Do we require that the amendments be read? It will take up time if we do this for each and every amendment, but I'm in your hands.

I hear silence, so we will not. We all have copies.

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

This particular amendment allows for a refugee to apply for permanent residence once they have actually been cleared and approved as a refugee. The first amendment dealt with the mandatory detention, which penalized refugees. This is another area in which the refugee is once again being penalized.

Under the current legislation, if a refugee is designated, unfortunately they are not going to be able to sponsor a family member from abroad for at least five years. The purpose or the intent of this particular amendment is to deal with that particular issue, so that the individual does not have to wait the five years before they are able to sponsor someone.

That's the essence of the amendment, as I understand it.

**The Chair:** Is there any debate?

(Amendment negatived)

**The Chair:** Mr. Lamoureux, you have a second amendment on clause 5?

**Mr. Kevin Lamoureux:** I'm going to withdraw that one, Mr. Chair.

**The Chair:** I think it's understood we don't need to read any of these, unless someone specifically asks for it.

(Clause 5 agreed to on division)

(On clause 6)

**The Chair:** Ms. Sims, you have a proposed amendment to clause 6.

**Ms. Jinny Jogindera Sims:** Yes. We have a substitute amendment, and I have the printed documents here.

**The Chair:** So this is to replace the one we have, Ms. Sims?

**Ms. Jinny Jogindera Sims:** Yes.

**The Chair:** Okay.

**Ms. Jinny Jogindera Sims:** Shall I read this into the record?

**The Chair:** It's in order, so you don't have to unless you wish to.

**Ms. Jinny Jogindera Sims:** I wish to.

**The Chair:** Okay.

**Ms. Jinny Jogindera Sims:** Chair, I'm reading it in only because we've put in new wording.

**The Chair:** That's fine.

**Ms. Jinny Jogindera Sims:** I move that Bill C-31 in clause 6 be amended by replacing line 16 on page 3 with the following:

prescribed biometric information, which may be collected and disclosed only if it is necessary for the purpose of verifying the foreign national's identity or for the purposes of national security and, in the case of a disclosure to be made to the government of a foreign state, the disclosure may be made only if there is an agreement or arrangement with that government that it may use the biometric information only for the purpose of verifying the foreign national's identity and that the information shall be destroyed as soon as the verification process is completed.

**The Chair:** Debate?

**Ms. Jinny Jogindera Sims:** This amendment restricts the collection of biometric information and the disclosure of it to circumstances where it is necessary for verifying identity or national security purposes, and, where disclosure is made to another government, only where there is an agreement in place that limits its use to verification of identification and where it sets out that the information will be destroyed once that verification occurs.

So we're not opposed to the collection of the biometric data, but we do want limitations as to how it's used and how it's disclosed.

● (1320)

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** From a government perspective, we proceeded very cautiously in terms of the issue of privacy. By and large, I think those who witnessed at and came to committee expressed a similar concern of the government. To be quite honest, I can't think of a witness who didn't support the biometrics as a part of this bill and as part of moving forward.

The difficulty with this amendment is twofold. First, it actually waters down the biometric provisions in and of themselves. Second, and probably most importantly, by specifying that biometrics are to be collected to verify identity only, it actually prevents the government from doing what is one of the most important purposes of this part of the legislation, and that is to check for criminal background. So the amendment actually waters down entirely the purpose of the biometrics.

Let's not forget that this is our step into the process moving forward, and the government has approached this in a very responsible manner. If we're going to move an amendment that actually doesn't allow the government to do background.... I'll ask government officials to comment on this to verify that what I am saying is correct, in that the ability to only verify identity and to not be able to do a criminal background check prevents a very important part of the biometrics provision, because that is in fact one of the major reasons we want to move this forward.

I would ask the officials to comment.

**The Chair:** Ms. Irish.

**Ms. Jennifer Irish:** I'll ask Monique Frison to speak for the department.

**The Chair:** You may proceed.

**Ms. Monique Frison (Director, Identity Management and Information Sharing, Department of Citizenship and Immigration):** Thank you, Mr. Chair.

With the references to verifying identity and national security, the reasons we would use and disclose biometric information are narrowed. We collect biometric information to support the two aspects of immigration decision-making. One is identity and the other is risk assessment. Any visa or border officer deciding whether to admit somebody to Canada would look at who a person is and what risk they pose to Canada.

For identity, yes, we will use biometrics to verify identity. On the risk side, there are many reasons aside from national security why we would decide not to admit somebody to Canada. Criminal history, war crimes, and crimes against humanity are all listed separately from national security in the Immigration and Refugee Protection Act. The amendment would have the effect of narrowing the uses we would make of the biometric information that we might collect.

**The Chair:** Mr. Lamoureux.

**Mr. Kevin Lamoureux:** Mr. Chair, I support the amendment. Having said that, let me explain why.

You'll recall that biometrics is something that is fairly recent in terms of an issue for the House of Commons. In fact, our own committee was debating that particular issue prior to the minister making this announcement. So we're still having committee meetings trying to better understand the role that biometrics plays for refugees, visiting visas, student visas—the whole nine yards—working visas, and so forth. Given that there are concerns with regard to disclosure and disposal of information, issues related to regulations, for all of those reasons and more, this whole aspect of the bill is one of the reasons why we feel that we're trying to ram a bill through without giving it due diligence.

When I look at this particular amendment, at least it's trying to go a little bit more on the side of caution. All in all, it's better to err on the side of safety than it is to plow ahead when in fact the government really hasn't done its due diligence in the whole spectrum of biometrics. At the very least, the government doesn't seem to think that our committee is worthy of participating in that discussion, or hearing our conclusions contained in our upcoming report.

That's the reason why I'll be in support of the amendment.

**The Chair:** Thank you.

Ms. Sims.

**Ms. Jinny Jogindera Sims:** Thank you very much.

The Privacy Commissioner has been very clear that there seem to be very few concerns around identity purposes and verification of identity. We haven't really seen that much further comment from the Privacy Commissioner on the true impact on privacy issues of the extension my colleague across the way wants to read into this. For us, we think it's perfectly legitimate, understanding that the Privacy Commissioner has addressed identification and verification of identification.

(Amendment negated)

(Clause 6 agreed to on division)

•(1325)

**The Chair:** We go to clause 7.

Mr. Dykstra.

**Mr. Rick Dykstra:** Simply a question. For the sake of time and in consideration of the opposition's wish to speak to their amendments, when we reach areas like this in the bill where we have three or more clauses that do not have amendments, may I suggest that you ask for those series of clauses to be passed at the same time, so we can expedite the process?

(Clauses 7 to 9 inclusive agreed to on division)

(On clause 10)

**The Chair:** We are on clause 10.

The New Democratic Party, Ms. Sims.

**Ms. Jinny Jogindera Sims:** Thank you.

This amendment is very clear. We are opposed to the two-tiered system. However, in order to mitigate some of the harm, this amendment would require that the minister could only make a designation for groups that are 50 persons or more.

**The Chair:** Mr. Dykstra, then Mr. Lamoureux.

**Mr. Rick Dykstra:** Very simply, Chair, the difficulty with this amendment is that it actually suggests to those who are in the business of smuggling that as long as it's 49 they'll be just fine. I don't really like that kind of poetry. I think the best thing to do is leave the responsibilities to the Minister of Public Safety and the ministry itself, in consultation with the Ministry of Citizenship and Immigration, to determine when an irregular arrival occurs. A number is very problematic.

**The Chair:** Mr. Lamoureux and then Ms. Sims.

**Mr. Kevin Lamoureux:** Mr. Chair—

**The Chair:** For the record, Mr. Lamoureux, we will not need to vote on your amendment.

**Mr. Kevin Lamoureux:** That was what I was going to note right at the beginning—they're identical votes, which goes to show that at least two of the three political parties around the table have seen the merit of changing it. This one might be seen as a little more favourable than the 5,000 one—it's been reduced to 50 persons. You'll notice the 50 is intentionally taken. The *Sun Sea* and the *Ocean Lady* would both have been subjected to this law.

I think 50 is a more reasonable number. But I want to make it perfectly clear that we do not support mandatory detention. I do believe 50 is more of a reasonable number. I support this amendment, and I'm sure my NDP colleague would support my amendment, which is identical.

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** I want to stress that we are opposed to the two-tiered designations. We heard some of the concerns that were expressed by my colleagues across the way to the effect that when you get a large group coming in and you don't know too much about them, once you designate them as irregular, it is a different process.

We're trying to avoid capturing families. The current language as proposed in the legislation would affect any groupings of more than two. This is just ridiculous. I know that our system could easily process 50. We could have made it 100, which is where many of us wanted to go. But once again, because we want to work with the government to address some of these issues, we came up with the very reasonable number of 50. I'm disappointed that my colleague across the way could not see the huge olive branch we reached out with.

(Amendment negated)

• (1330)

**The Chair:** Liberal amendment 2.1 will not be voted on, Mr. Lamoureux, but you may speak to Liberal 2.2.

**Mr. Kevin Lamoureux:** I would move that Bill C-31 in clause 10 be amended by replacing line 30 on page 4 with the following:

conducted within 48 hours of their arrival; or

As to whether it's 48 hours or 96 hours, we're very much open to either. Forty-eight hours just happened to be the number of hours we put in. When people come in, in a boat situation or a more-than-two situation, there should be a reasonable time before the minister can designate them as irregular arrivals. There could be situations where the individuals in question might be able to provide appropriate identification and background information so that they could avoid that designation. At least that was the intent. I trust that's what the amendment is reflecting.

I would welcome opinions and thoughts on this.

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** There isn't any policy rationale for changing the reference in the bill from "in a timely manner" to "within 48 hours". It's critical that we maintain the discretion of the Minister of Public Safety and allow the ministry itself to make these determinations.

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** We're against designations. We're definitely against the mandatory detention. I think that a review occurring within 48 hours is very reasonable, so we'll be supporting this amendment.

(Amendment negated)

**The Chair:** Liberal amendment 2.3, Mr. Lamoureux.

**Mr. Kevin Lamoureux:** Mr. Chair, I would move that Bill C-31 in clause 10 be amended by replacing line 31 on page 4 with the following:

(b) has reasonable grounds to believe that, in

To speak to it very briefly, Mr. Chairperson, what we're trying to do is replace the word "suspect" with "believe". The reason for that is that there is a much lower standard. It was pointed out by one of our presenters that we are lowering the standard by using the word "suspect", which causes concern. To replace that word with "believe" is the purpose of the amendment.

(Amendment negated)

**The Chair:** We will hear from Ms. Sims on NDP-4.

**Ms. Jinny Jogindera Sims:** This amendment limits the restriction on designated foreign nationals from applying for permanent residency to circumstances where they are not identified or have not satisfied security requirements.

Once again, Chair, we have a draconian bill here that absolutely attacks the victims, and all we are trying to do here is mitigate some of that damage.

• (1335)

**The Chair:** Monsieur Giguère.

[*Translation*]

**Mr. Alain Giguère:** Mr. Chair, my colleague from North Delta, in Vancouver, clearly indicated what we want. We want to do away with the contemptuous aspect of penalizing people because they have been flagged as designed foreigners. That's unacceptable. Even the Canadian Bar Association supports our position. We need to listen to stakeholders as dependable as the Canadian Bar Association representatives, who are saying that this is a threat to Canada's judicial principles. So let's follow all the legal precedent.

In Canada, we have a charter of rights and freedoms, and we should start by respecting it, and not changing it based on extremely flexible security criteria. I want to point out that Bill C-11 and all other current pieces of legislation make it possible to screen out terrorists. That work is currently being done properly. This clause is nothing but a threat to our rights.

[*English*]

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** That being said, Mr. Chair, Mr. Giguère probably heard my comments with respect to the first NDP amendment. I won't repeat them in detail. They stand the same. This amendment actually makes the legislation pale in comparison to what this amendment would do to those irregular arrivals.

It shocks me to see this loose of an amendment, which just gives far too much openness to the process. It redefines the legislation to such a minimal standard that not only is it going to get voted against by the government, but I fear that if the NDP isn't going to withdraw these types of amendments through the course of the next couple of days, it gives us some pretty good political defence that we don't go nearly as far as the NDP wants to go. These types of amendments would simply eliminate almost anyone coming in on an irregular trip, an irregular means to get to Canada, such as a ship, and would actually disallow them permanent residency.

We will not be supporting the amendment.

(Amendment negated)

**The Chair:** Now we have Mr. Lamoureux, on Liberal amendment 3.

**Mr. Kevin Lamoureux:** Mr. Chair, it's a fairly lengthy amendment, so people should take the opportunity to turn to the page with it.

The essence is that it deals with the five-year ban that applies to designated irregular arrivals being able to apply for permanent resident status.

Again, it reinforces whether one believes in having one refugee policy or a two-tier refugee policy. If you happen to be a refugee who comes to Canada and you're deemed as an irregular, to then say to that person you cannot even apply for permanent resident status so you can sponsor your children or your spouse abroad is just wrong. It's clearly in violation of the 1951 UN Convention, and we've had presentations on this particular issue.

I would suggest that it is an amendment that is worthy of passage. Hopefully the government will see the wisdom in it and allow refugees, even if they are in mandatory detention centres, the ability to gain their permanent resident status sooner.

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** I have two comments, Mr. Chair.

One of the first witnesses we had spoke to the push and pull factors of the reasons an individual is determined to come to Canada. This is one of the pull factors. One of the reasons it actually draws people to come to Canada is because we have built this.... That is one of the reasons the bill is here, to repair these holes in the dike, if you will, that allow for Canada actually pulling people to come here as refugees, as part of what ends up becoming criminal human smuggling.

The second point is that the convention actually does not include an obligation for a pathway to citizenship. It's an obligation to provide.... We do our part, but it does not provide an obligation for citizenship.

We will not be supporting this amendment.

• (1340)

**The Chair:** Mr. Lamoureux.

**Mr. Kevin Lamoureux:** The UN convention does indicate that you have to treat refugees equally, and this clearly does not.

(Amendment negated)

**The Chair:** Mr. Lamoureux, Liberal 4.

**Mr. Kevin Lamoureux:** We're not going to move ahead with that amendment, Mr. Chair.

**The Chair:** You're withdrawing it?

**Mr. Kevin Lamoureux:** Yes.

(Clauses 10 and 11 agreed to on division)

(On clause 12)

**The Chair:** We're on to clause 12.

Ms. Sims, NDP amendment 5.

**Ms. Jinny Jogindera Sims:** Amendment 5 once again tries to mitigate some of the damage this bill will do to the way we treat refugees. It specifically in this case limits the restrictions on designated foreign nationals from applying for a temporary resident permit to circumstances where they have not been identified or if security requirements have not been addressed.

This actually makes it much, much tighter.

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** Mr. Chair, I repeat that this does the exact opposite.

Sitting on the government side and saying we shouldn't be giving the minister this much authority.... I'm almost hesitant to say it, Mr. Chairman, because it's always the government that is trying to promote that the government should be taking responsibility, but this is far too much authority within the Minister of Citizenship and Immigration's purview. We can't support it.

Again, I come back to the fact that it's just not drafted well. This doesn't tighten, it loosens. It treats the irregular arrival of potential refugees in a much more criminal manner than our legislation will.

**The Chair:** Monsieur Giguère.

[*Translation*]

**Mr. Alain Giguère:** I would like to answer Mr. Dykstra. The need for safety is what draws refugees to Canada. Those people are persecuted. If we recognize them as refugees, we must give them all the rights a refugee can obtain from our country. We should not have a two-tier system—one for refugees we like and another for those we consider to be suspicious because they arrived in a way we see as irregular. That's arbitrary because it is decided by the minister. That's the true scope of those measures.

We want that clause to be limited only to those individuals who truly represent a threat to Canada's security or whose identity is unclear. We are attacking the principle of designated foreigners. Once again, the Canadian Bar Association supports our position. This idea does not violate any laws, the Canadian Charter of Rights and Freedoms or our country's constitution. You are attacking what you should not attack. It's a bit like a situation where a chicken farmer's chicken coop has been ravaged by a fox. Instead of taking precautions against the fox, the farmer punishes the chickens. That's exactly what you are doing. You are punishing people who have been the victims of smugglers, and that is unacceptable, especially since you recognize the fact that they are refugees.

Thank you.

• (1345)

[*English*]

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** Once again, Mr. Chair, I want to reiterate that we believe the current legislation, Bill C-11, would address the concerns we've heard expressed from the government side.

Right now, none of the designated people could receive a temporary resident visa or anything else for up to a year. They may not even have travel documents or anything else. What we're saying, and what this amendment says, is that the only people who would not be given a temporary resident visa are those for whom identity has not been determined and for whom security requirements have not been addressed. But as soon as those two things are done, then people should have documents.

(Amendment negated)

**The Chair:** Monsieur Lamoureux, Liberal 5.

**Mr. Kevin Lamoureux:** Mr. Chair, I would move that Bill C-31, in clause 12, be amended by replacing line 29 on page 6 to line 30 on page 7 with the following:

(5) The officer may refuse to consider a request for a temporary resident permit if the designated foreign national fails, without reasonable excuse, to comply with any condition imposed on them under subsection 58(4) or section 58.1.

Mr. Chair, the question remains as to why we are still limiting legal status of designated foreign nationals, why we are making these designated irregular arrivals wait five years before they can actually apply to get a TRP.

To pick up on the point Mr. Dykstra made—and he indicated I could make up whatever I like with regard to this whole two-tiered system—I want to refer the member to a presentation that was given by the UN refugee agency, which many, including me, would argue is a fairly world-renowned organization. If you turn to page 9 of the UNHCR's document on Bill C-31, they actually have two very short recommendations:

UNHCR recommends that, in the spirit of the 1951 Convention, the five year bar to regularization of status be removed.

Recommendation number seven:

UNHCR recommends that the principle of family unity be fully respected and applied consistently throughout the refugee procedure and that recognized refugees under the 1951 Convention be entitled to apply for family reunification in a timely manner.

So the one amendment that was just defeated kind of touches on both.

The point I was trying to make on establishing that double tier was that the convention does say that you cannot penalize based on a mode of entry, and that is in fact what we're doing.

I obviously expanded a little bit further than what the actual amendment deals with, but the principle is still there.

Thank you, Mr. Chair.

**The Chair:** Debate?

Ms. Sims.

**Ms. Jinny Jogindera Sims:** We support this amendment.

**The Chair:** I'm sorry, I'm out of order.

Mr. Dykstra.

**Mr. Rick Dykstra:** That's fine.

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** We support this amendment.

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** We don't support the amendment. I've made that clear, but I want to clarify.

It's fine to point to comments or submissions made by witnesses, but I recall this very directly, because I asked a number of questions to our UNHCR representative who came here. When I continued to ask point-blank about other countries and how they compare to what we were doing on this specific issue, his response was that he could give me a direct answer, or he could do as he did, in that he ended up giving me an answer and saying that, well, just because we're

making recommendations doesn't mean that you're not meeting the criteria.

So while I have no difficulty whatsoever with hearing what the recommendations might be from the UNHCR, when we did have the witness here, he indicated that they weren't basing their recommendations on minimum thresholds or on what other countries were doing. In his responses he acknowledged that other countries were not doing as much as we are going to do under this legislation. It didn't mean they were pursuing them because they were not compliant with—as you've referred to so many times—the convention of 1951.

I should point out that you can use the material—no problem—but understand that his response was somewhat different in nature in terms of what you're suggesting.

(Amendment negated)

• (1350)

**The Chair:** Mr. Lamoureux, are you withdrawing Liberal amendment 6? My notes say you are.

**Mr. Kevin Lamoureux:** Yes.

**The Chair:** On Liberal amendment 7, Mr. Lamoureux, you have the floor.

**Mr. Kevin Lamoureux:** Mr. Chair, I would move that Bill C-31 in clause 12 be amended by deleting.... I can't quite make this out, but I have "line 30 on page 6 to line 3 on page 7". I think you might have some other number, as opposed to 30. Is it 29?

**The Chair:** It's 29.

**Mr. Kevin Lamoureux:** Okay. I can just reread it. I move that Bill C-31 in clause 12 be amended by deleting from line 29 on page 6 to line 3 on page 7.

**The Chair:** Mr. Lamoureux.

**Mr. Kevin Lamoureux:** I'm sorry, Mr. Chairperson, it was supposed to be concurrent with the other amendment, which was just defeated. Because that amendment was defeated, I guess this one is no longer valid.

**The Chair:** So you're withdrawing this?

**Mr. Kevin Lamoureux:** Yes. Sorry.

(Clause 12 agreed to on division)

(On clause 13)

**The Chair:** On clause 13, we have amendment NDP-6.

Ms. Sims, you have the floor.

**Ms. Jinny Jogindera Sims:** Thank you.

This amendment once again ensures that the bar for humanitarian and compassionate applications is limited only to those designated foreign nationals who have not been identified or where there are reasonable grounds to have security concerns about them.

I just want to read a little quote here from Barbara Jackman, on April 30:

Secondly, we have the Charter of Rights and Freedoms. You as parliamentarians are responsible for ensuring that the legislation complies with the charter. Thirdly, every time you put an absolute bar in legislation you make it open to challenge, because absolutes often don't comply with the charter.

For example, persons who are excluded from the system may have a good reason to have their refugee claim determined. Or, for example, for a person who has lost their pre-removal risk assessment, there's a 12-month bar on making another application. It may be that conditions in the country change before they're moved, but by making an absolute and prohibiting them from being able to make a second provision if the conditions warrant, you are forcing them into court on a constitutional challenge. That's the problem with the absolutes. That's why we are placing this amendment on the floor.

**The Chair:** Ms. Sitsabaiesan.

**Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP):** Thank you, Mr. Chair.

We've always said and have always believed and reaffirmed that no country is completely free of persecution. We know that even here in Canada there are people who are.... To this end, I feel that it's very important that we remove the bar for application for permanent residency on the basis of humanitarian and compassionate grounds, except, of course, for circumstances where identification has not yet been established and where there are reasonable grounds to have security concerns about the applicant. The humanitarian and compassionate grounds are just an extra safeguard.

As my colleague Ms. Sims mentioned in the quote from legal expert Barbara Jackman, it's an extra safeguard that's there. We should not remove the bar for applications for permanent residency.

Mr. Chair, I feel it's extremely important that we allow due process, except for those circumstances that I mentioned earlier.

Thank you.

(Amendment negatived)

**The Chair:** Mr. Lamoureux, Liberal amendment 8.

**Mr. Kevin Lamoureux:** I am withdrawing, please, Mr. Chair.

**The Chair:** Amendment G-1, Mr. Dykstra.

**Mr. Rick Dykstra:** Thank you. This is proof positive that the government is listening and has acted.

Perhaps, because it is a technical amendment, Ms. Irish wouldn't mind commenting on the reason for the technical amendment.

•(1355)

**Ms. Jennifer Irish:** Thank you.

I would ask Warren Woods to address the question.

**Mr. Warren Woods (Manager, Asylum Policy and Programs, Department of Citizenship and Immigration):** Thank you. I'm happy to speak to this.

This is a technical clarification. It's meant to provide the Minister of Citizenship and Immigration with clarity as to when he has an obligation to decide a humanitarian and compassionate application. In the case of foreign nationals, the minister would not have an obligation to decide the application once a refugee claim has been

made to the Immigration and Refugee Board. That's the first part, the (b) part.

Paragraph (c) further clarifies that once the Immigration and Refugee Board has made a final determination of the claim, be it at the Refugee Protection Division or the Refugee Appeal Division, there is a 12-month waiting period before the claimant could requalify for humanitarian and compassionate consideration.

Thank you.

**The Chair:** You're probably getting a little bit ahead of yourself, but we do that all the time.

Mr. Dykstra, do you have any further comments? Is there any further debate?

Mr. Lamoureux.

**Mr. Kevin Lamoureux:** How does that change what the legislation currently says? What's the actual change?

**Mr. Warren Woods:** On the first part, it changes nothing, but it's a clarification. Under paragraph (b), the words "the Refugee Appeal Division" have been added to clarify that a person may not access the humanitarian and compassionate process until that division has finally determined the appeal against them. The previous wording in the bill has less clarity on that, but that was the direction.

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** I have a question of clarification for Mr. Dykstra or anybody else who wants to answer it.

Would this change affect a person who has a case going before the Refugee Appeal Division? While that is going on, would the minister still then accept an application for humanitarian and compassionate grounds?

**Mr. Rick Dykstra:** Can you help me with that?

**Mr. Warren Woods:** Yes.

The answer is no, because the claim is still technically pending before the Refugee Appeal Division of the IRB. When it is concluded there, that's when the application could proceed.

It's when the 12-month legislative prohibition commences. It doesn't commence at the end of the RPD's decision on the claim. The 12-month bar commences at the appeal determination by the RAD. It's the later of the two divisions where the 12-month time starts to count.

**Ms. Jinny Jogindera Sims:** Let me just be clear. If I come in as a refugee and am designated, I go before the Refugee Appeal Division, and then there is no way at that time that I can file under humanitarian and compassionate grounds.

**Mr. Warren Woods:** You can file, but the minister does not have an obligation to consider the application.

**Ms. Jinny Jogindera Sims:** Then I think we're dancing with semantics.

**Mr. Warren Woods:** That's the structure of the act.

**Ms. Jinny Jogindera Sims:** Thank you.



So it's very clear that no is the answer, because if the minister's not required to look at it and there is no obligation on the minister, then that right doesn't exist for the designated foreign national.

• (1400)

**The Chair:** Mr. Dykstra.

**Mr. Rick Dykstra:** It doesn't exist until after the 12-month period has elapsed from the person's rejection of their claim and/or their appeal.

**Ms. Jinny Jogindera Sims:** So that 12-month period during that does not apply. I think we're in agreement with that one—not in agreement with your intent, but agreement with the way you've explained that's what it says.

**The Chair:** Mr. Lamoureux, very quickly. The bells are ringing, and we don't want to miss the national anthem.

**Mr. Kevin Lamoureux:** I'm with you, Mr. Chair.

Just so I'm perfectly clear myself on the clarification that has been provided, the essence of the bill is that you can put in an application for humanitarian and compassionate grounds virtually the day you arrive, but it cannot be looked at until 12 months after a final decision was made by the Refugee Appeal Division. Is that a fair assessment?

**Mr. Warren Woods:** It's even a bit more nuanced than that.

When a foreign national arrives in Canada, he can apply for humanitarian and compassionate consideration under this bill, and that application has to be considered by the minister.

Once the foreign national tries to enter into the refugee process and makes a refugee claim, he or she has to make a choice as to which process to pursue, whether the refugee stream or the humanitarian and compassionate stream.

If for example he initially enters a refugee claim and the IRB hears what's referred to in the legislation as substantive evidence, the hearing of testimony, that means the minister does not have an obligation to consider an application for humanitarian and compassionate.

**Mr. Kevin Lamoureux:** Thank you.

It does make sense.

(Amendment agreed to on division) [See *Minutes of Proceedings*]

**The Chair:** We will leave off. We will start with NDP amendment 7 when we return at 3:30.

You may leave your materials here. The room will be secure, and I've been assured nothing will be touched.

The meeting is adjourned.

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