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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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• (1535)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon.

This is the Standing Committee on Citizenship and Immigration, meeting number 54, on Wednesday, October 24, 2012. This meeting is televised. Pursuant to the order of reference of Tuesday, October 16, 2012, we are studying Bill C-43, An Act to amend the Immigration and Refugee Protection Act.

Before I introduce our witnesses, I've been advised that a concurrence motion has been introduced in the House, so we may have a vote sometime this afternoon.

Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Mr. Chairperson, if I could, I have had the opportunity to talk to Ms. Sims, and I believe the New Democratic Party would support what I am going to suggest.

Mr. Chairperson, I would ultimately ask if we could have the committee canvassed on the budget bill, which is Bill C-45—

The Chair: Let's do that another time, Mr. Lamoureux. We have the minister here.

I know you've got a notice of motion. You need 48 hours. You don't have 48 hours, so we're not going to proceed with that today.

Mr. Kevin Lamoureux: Is there any chance that we could see if there is unanimous consent to have it—

The Chair: No. We're not going to proceed with that today, Mr. Lamoureux. You need 48 hours' notice, and you don't have that yet.

Mr. Kevin Lamoureux: We couldn't ask for unanimous consent from the committee?

The Chair: I don't think so.

I am advising that we could have a vote within the hour. We will now meet with our guests. The Honourable Jason Kenney is the Minister of Citizenship, Immigration and Multiculturalism.

Good afternoon, Minister Kenney. You have a number of witnesses. I think we've met them all in the past, but at the appropriate time I'll let you introduce your colleagues.

You have up to 20 minutes to make a presentation to the committee.

Thank you, sir, for coming.

Hon. Jason Kenney (Minister of Citizenship, Immigration and Multiculturalism): Thank you, Mr. Chairman.

We do have a number of officials here, from both the Department of Citizenship and Immigration and Public Safety Canada.

Thank you.

[Translation]

Honourable colleagues, thank you very much for the opportunity to speak to the Standing Committee on Citizenship and Immigration about Bill C-43. This piece of legislation is part of the major effort we are making to strengthen the integrity of our generous immigration system.

As you know, under the current government, Canada has the highest rate of immigration in our history and the highest per capita rate in the developed world. The vast majority of new Canadians, of course, arrive with every intention to abide by the laws of Canada and to fully integrate into society. They in particular have no sympathy for foreign nationals who arrive in Canada and who are convicted of serious crimes.

This is why our government made a campaign commitment to streamline the process of removing foreign criminals who have been convicted of serious criminality under our justice system.

The government has also recognized that some amendments have to be made to the Immigration and Refugee Protection Act in terms of admissibility to Canada. This is a complex but significant aspect of the Immigration and Refugee Protection Act.

The goal of the amendments is to allow entry to Canada to honest people who are going to contribute to the prosperity of our country and to deny entry to those who perhaps represent a threat to our security or our public health.

[English]

I am pleased to present to you Bill C-43, Faster Removal of Foreign Criminals Act, which responds to those objectives that we committed to in the last election, and indeed in the throne speech.

Through this important legislation we are delivering on a campaign commitment to streamline the process to deport convicted foreign criminals.

Currently, a permanent resident or foreign national may be ordered deported if they could receive a maximum sentence in Canada of at least 10 years for their crime or if they receive an actual sentence of more than six months. But there's a fundamental problem with the status quo. As long as the sentences for such convicted criminals are less than two years, permanent residents can appeal their deportation from Canada to the Immigration Appeal Division of the IRB, and if they lose that appeal, they can appeal that through an application for judicial review to the Federal Court. This adds, in many cases, up to three years of delays in deportation for serious convicted foreign criminals.

Chairman, I believe that even foreign criminals convicted of serious crime deserve their day in court, but they do not deserve endless years in court while they delay their deportation from Canada. I believe that even foreign criminals convicted of serious crime deserve due process, but they should not be able to endlessly abuse Canada's fair legal process.

That's why, under this act, any permanent resident who receives a sentence in Canada of six months or more would no longer be able to appeal their deportation to the IAD, the appeals division of the IRB. This legislation would also bar those who have committed serious crimes outside Canada that would be punishable in Canada from accessing the appeals division.

[*Translation*]

It is important to note that serious criminality is already defined under the Immigration and Refugee Protection Act as a conviction for which a sentence of more than six months has been imposed. There was some confusion about this during the debate on second reading in the House.

I emphasize that this bill does not change the definition of serious criminality in the Immigration and Refugee Protection Act. It continues to be a conviction for which a sentence of more than six months has been imposed. The changes we propose are therefore consistent with other provisions currently in our immigration legislation.

● (1540)

[*English*]

To those who argue that any of this is somehow unfair, that we're punishing people for so-called minor crimes, whatever that means, or mistakes they've made in the past, we say that residency in Canada is a privilege, not a right. One of the few things we ask for you to maintain that privilege is that you not commit a serious crime in Canada. If, as a foreign citizen, you come to Canada with the privilege of residency and you commit a serious crime, let's be clear, you lose the privilege of staying in this country.

Mr. Chairman, as you know, I regularly meet with members of our diverse culture communities, and they feel this particularly strongly. I'll just say as an aside that it's no accident that I made the commitment to this legislation during the last election in Vancouver's Chinatown at a press conference that I think was attended entirely by members of the ethnocultural media. We have seen massive support for this idea from new Canadians because overwhelmingly they're the folks who play by the rules, who come here and treasure the residency that typically leads to citizenship, and frankly, they have

no patience for those who come here and abuse Canada's generosity by victimizing Canadians, and very often victimizing new Canadians.

I'd like to suggest to the critics of this bill that I'd like to hear them, for once, talk about the victims of these crimes. I'd like for them to contemplate or even acknowledge the sad reality that many Canadians, including many new Canadians, have been victimized, even through violent crimes, by foreign nationals who were delaying their deportation thanks to the kinds of delay tactics that this bill seeks to close.

[*Translation*]

Some critics, including the opposition, ask us to consider the hardships that criminals and their families will face. But do those critics ever stop to think about the hardships faced by the victims of crime?

One immigration lawyer expressed concern about the "monumental effect" that the removal of foreign criminals would have on immigrant communities. Frankly, I think that idea is insulting to immigrants. As I mentioned earlier, the vast majority of immigrants, like other born and bred Canadians, are law-abiding, hard-working, honest and proud. In fact, we accept more than a quarter of a million new permanent residents per year, of whom fewer than 1,000 are convicted of serious criminality and appeal to the IRB. That means that this bill will affect less than 1% of all permanent residents, 0.3% of them, to be precise.

[*English*]

Unfortunately, there are countless examples of foreign criminals who have been given sentences of under two years and have managed to parlay that delay into a long, drawn-out removal process that lasts for years, including some of the worst offenders imaginable.

Take the outrageous example of Cesar Guzman, a Peruvian national who was issued a deportation order after being convicted of sexually assaulting a senior citizen. This predator was only sentenced to 18 months in prison, so he was able to use his appeal to the Immigration Appeal Division. He should, however, have been sent packing back to Peru as soon as he had finished serving his 18-month sentence, but because of the avenue of appeal that was open for him, he delayed his deportation for nearly four years.

Mr. Chairman, when Canadians read about cases like this they are understandably upset that we permit such delays to occur. Worst of all, many convicted foreign criminals have used the time they've bought appealing their deportation to reoffend, and sometimes to commit even more heinous crimes.

The fact that these foreign criminals can walk freely on our streets when they should have been sent home at the earliest opportunity disturbs the vast majority of Canadians. I can think of no better and more tragic case that typifies this problem than that of the murder of Toronto Police Constable Todd Baylis, who was killed by a foreign national who was delaying his deportation. There were operational mistakes on that file, but the fact that he was able to make an IAD appeal and delay his deportation contributed to the fact that Jamaican citizen Clinton Gayle was in Canada to kill police Constable Todd Baylis. We can never let that sort of thing happen again.

• (1545)

Under Bill C-43, if you commit a serious crime, you will get your day in court, but you won't get endless years in our courts.

There are other measures of the bill that seek to facilitate legitimate travel to Canada by people who do not pose any kind of a risk, which I think was skipped over in the debate on second reading. For example, previously, if low-risk travellers were accompanied by a family member who was inadmissible for grounds other than security or criminality, such as health, the entire family would be found inadmissible and would have to return to their home country. This bill proposes to improve the system so that only the inadmissible individual would be denied entry into Canada. All other accompanying family members would be allowed to enter. It doesn't penalize family members for one member's inadmissibility.

Yet another key change would give the Minister of Citizenship and Immigration new authority to deny entry—and I'll just focus on this—in exceptional cases to foreign nationals who mean harm to Canadians, such as individuals who encourage or incite hatred that could lead to violence. There has been some controversy on this provision. In the bill, we propose that the minister would have the ability to deny entry to foreign nationals based on public policy grounds. We drew that legislative proposal from our study of analogous provisions in peer democracies like Australia, New Zealand, the United States, the United Kingdom, and many western European countries that have various forms of what we would call negative discretion.

Colleagues, let me explain the rationale. Quite frequently, members of Parliament and members of the public come to us and ask why we would admit to Canada a foreign national who has a long record of promoting hatred, and even inciting violence. To give you one example, last year the Council of Quebec Gays and Lesbians protested the effort of Mr. Hazma Tzortzis and Mr. Abdur Raheem Green, British nationals who were seeking to come to Canada to speak at a conference. These two individuals have a long record of vicious hatred, including calling for the death of gays and lesbians, Jews, violence against women, etc. Indeed, the Quebec National Assembly passed a unanimous motion calling upon me as the minister to deny entry into Canada of these individuals. This is one of many examples.

In fact, when I was a member of the opposition, I had proposed that we deny entry to Canada of Fred Phelps, a man who goes around promoting violent hatred against gays and lesbians. I also did so with respect to Sheikh Abdul Rahman Al-Sudais, a Saudi national who called for the destruction of all of the Jewish people.

Now, here's the problem we have, Mr. Chairman. If you believe the admission of such people to Canada is a problem—and that's a debatable question, for sure—and if you believe that such foreigners should not be permitted to spread potentially violent hatred in Canada, you have to recognize that the current law doesn't give us the tools to deny them entry, unless they are inadmissible on national security grounds. Let me be clear: promoting hatred against Jews is not a crime in Saudi Arabia. There are many countries in which crimes that exist in Canada do not exist in other countries, such as the promotion of violence or hatred against vulnerable groups.

This raises a very serious question as to whether or not Canadians and Parliament believe there should be some reasonable, discrete, limited, flexible tool that we can use in extraordinary cases where, for reasons like this, we want to keep out a foreign national who might otherwise be admissible. On what grounds you apply that power and in which cases and so forth are all legitimate questions for debate, which is why I'm tabling before the committee, Mr. Chairman, proposed guidelines for the exercise of this power of negative discretion.

• (1550)

I share now with committee members that this would focus on those who are involved in promoting terrorism, violence, or criminal activity, such as promoting or glorifying terrorist violence; promoting or glorifying a listed entity under a listed terrorist entity; counselling, encouraging, or inciting others to commit terrorist activity or terrorist violence; inciting hatred that is likely to lead to violence against a specific group; or promoting, counselling, encouraging, or inciting serious criminal activity. Additionally, this would give us the authority to deny admission to a foreign national of a country against which Canada has imposed sanctions under the United Nations Act or the Special Economic Measures Act, where that foreign national is a former or current senior official of the government of that country or of any entity owned or controlled by or acting on behalf of the government, or an associate or a relative of an official or person set out in paragraph 36(1)(a), or of a foreign national who is a politically exposed foreign person listed in regulations to the Freezing Assets of Corrupt Foreign Officials Act.

The latter section responds to calls from the opposition, from the Liberal and New Democratic parties, following the arrival of certain members of the family of Mr. Ben Ali, the former Tunisian dictator. Members of his family managed to get admission to Canada, and members of the public and opposition asked, "Why are you allowing the dictator's family to seek refuge in Canada?" The answer was that they're not otherwise technically inadmissible under sections 34, 35, and 36 of IRPA. These are the inadmissibility provisions, and we can't deny them admission if they don't have a criminal conviction or they're not members of a terrorist organization.

There may be cases where we want to bar, for example, senior regime members. We had sanctions on the Burmese regime. This would have given us the authority, for example, to deny members of the junta from Burma, at the time, from entering Canada.

We have sanctions now on the Iranian regime. We may want a broader power to deny admission to Canada of senior members of that regime. This would give us those tools.

As I conclude, Mr. Chairman, I would invite the committee to give these issues very serious, sober-minded consideration. I would say to my friends in the opposition, who aspire to form government some day, that they may have to grapple with these problems, too.

I think all of us, as parliamentarians, need to very soberly reflect on what are the appropriate criteria, if any, to deny admission to foreign nationals in such exceptional circumstances. And how do we have a flexible tool that can respond to these situations?

Finally, Mr. Chairman, thank you for your attention. There are many other provisions of the bill that I didn't get into—some of which are technical, but all of which are important—and I and my officials stand ready to respond to your questions.

The Chair: Thank you, Mr. Minister.

I've just been advised there will be no vote, so we can stay.

Mr. Opitz, you have the floor.

Mr. Ted Opitz (Etobicoke Centre, CPC): Thank you, Mr. Chair.

Good afternoon, Minister. Thank you for appearing with us again today.

I applaud what you're doing here because this is a very difficult topic, especially when it comes to victims. You're right, victims have not often been identified as part of this, like Todd Baylis, which is the extreme example of somebody who has been affected by criminal behaviour by somebody from overseas who shouldn't have been here and who should have been removed far earlier, if the process at that time had allowed it.

This is something that really needs to be brought forward. Minister, I think our friends in the Liberal Party unwisely voted against this bill at second reading. They argued that it's actually not fair that permanent residents should have to obey the law and not commit crimes as one of the requirements to gain the privilege of becoming a Canadian citizen.

Sir, how would you respond to that?

Hon. Jason Kenney: What was the last part of the question?

Mr. Ted Opitz: That it's not fair for permanent residents who must obey the law and not commit crimes as one of the requirements to gain the privilege of becoming a Canadian citizen—

• (1555)

Hon. Jason Kenney: Look, I think this is pretty cut and dried. I don't think this is complicated. If you come to Canada as a permanent resident, we welcome you. We're the most welcoming country in the world, and this government has maintained the most welcoming posture of any developed country in the world. We have, in fact, since we came to office, admitted nearly 1.8 million permanent residents in the last six years, and we have welcomed

about 1.3 million citizens. It's unprecedented in the world and in our history, certainly in relative terms, at least.

In our generosity, we ask very little of people who come to join us in Canadian society. One of the very few things we ask is that in enjoying the privilege of residency in Canada, you not commit a serious crime. Nearly 100% of immigrants find no difficulty in avoiding committing a serious crime. Frankly, I think it's insulting to suggest that this is some kind of a burden placed on new Canadians or placed on permanent residents. I don't think it's a burden to avoid committing a serious crime.

There's some suggestion here that this constitutes a diminution of due process or natural justice. Nothing could be further from the truth. Every foreign national who's charged with a crime in Canada, every permanent resident who is charged with a crime, will get their day in a criminal court. If a judge deems they have committed a sufficiently serious offence to receive a penalty of six months or more, they are currently, under IRPA, considered serious foreign criminals and subject to deportation. We are simply saying we'll move forward with the removal, rather than allowing people to buy several years of delay, during which we see too many recidivists, too many repeat crimes, too many new victims claimed.

Moreover, I would point out that if you get that conviction at a Canadian criminal trial court, you can appeal that conviction to an appeals court, and if there are grounds, you could further appeal it to the Supreme Court. Similarly, under what we are proposing, once that conviction is established in law, they will no longer have this appeal to the IAD of the Immigration and Refugee Board. Let me point out that it's not only the IAD appeal. That's taking us about 18 months right now, because we have so many of these cases, so that buys them 18 months. If they lose there, then they make an application for judicial review of the negative IAD decision to the Federal Court, and that buys another eight or nine months, maybe a year. So we're often talking about two and a half to three years of bought time to stay in Canada. Having eliminated that, under Bill C-43 serious convicted foreign criminals will still be able to make an application for a pre-removal risk assessment. If that decision is negative, they'll be able to seek leave to the Federal Court for review of their negative PRA.

Frankly, I suspect a lot of Canadians think the streamlined system we're proposing here is still too generous for people who have violated the privilege of staying in Canada and have committed serious crimes. But we are, of course, committed to our fair legal system and our international obligations of non-refoulement, for example.

Mr. Ted Opitz: I agree, and democracy is followed.

I know in the citizenship guide on the website people are reminded that Canada essentially stands on four pillars: freedom, democracy, human rights, and the rule law. I know they're educated about this prior to even coming here, because that information is out there for all to read and for all to educate themselves on before they attempt to come to Canada. It's not like it's a surprise, if you come here and you're a former criminal.

Now, one provision of the bill that seems to have been completely missed by the media, and perhaps altogether ignored by our friends in the opposition—you touched on it, but I'd like you to expand on it a bit—is the change for family members travelling with individuals who are inadmissible on grounds other than the most serious ones.

Sir, can you please expand further on how the system worked before, and then how this is an improvement that will help legitimate travellers to Canada?

Hon. Jason Kenney: Yes, thanks, Mr. Opitz.

The “inadmissible family member” proposal includes two elements: it is, first, to facilitate the temporary entry of foreign nationals who have accompanying family members who are inadmissible under certain provisions of IRPA; and second, it's to restrict the temporary entry of foreign nationals who have non-accompanying family members who are inadmissible on security grounds. What we're making here are some subtle changes.

For example, you're a family—let's say in India—hoping to visit Canada, come to a family wedding, and it turns out that one member of the family has a medical condition that might represent an excessive burden on the Canadian health care system. Right now, we would look at that application and because it is a group and one of them is inadmissible, they all are inadmissible. This new power will allow us to sever the inadmissible individual and say, “I'm sorry, but you're medically inadmissible”, but say to the other folks, “You're welcome to come into Canada”. That facilitates the entering into Canada of people who are not a problem.

On the other hand—

• (1600)

The Chair: Perhaps you could wind up, Mr. Minister.

Hon. Jason Kenney: Sorry. Sure.

Just on the other side, I would say if you're the wife of a dictator and you're seeking to come to Canada, we're going to attach you, in a sense, to his inadmissibility and deny you entry.

The Chair: Thank you.

Ms. Sims.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Thank you very much.

Minister, it's really good that you can be here for two hours today. I know you have a very busy schedule and a very active file that keeps you and the rest of us busy.

Minister, I believe all Canadians want a tough approach to non-citizens who commit serious, often violent crimes in our communities. Newcomer communities, the vast majority of whom are law abiding and follow the rules, would be among the first to agree with this sentiment.

As you know, I made it clear when this legislation was introduced that as a responsible opposition we are ready to work with the government to ensure that criminals of all backgrounds are not allowed to abuse our appeals process. But I want to make it clear to you today that our support in principle at second reading is not a blank cheque, and I am serving notice to you today that we expect the government to work with us to make sure that we protect Canadians and respect due process and the rule of law at the same time.

I will be blunt. We have serious concerns about the bill being proposed here. We are concerned with both its effectiveness in dealing with the issue of non-citizen criminality as well as its extraordinarily wide scope. In particular, Bill C-43 grants you sweeping new powers. The last thing your immigration system needs is to be criticized even more. The reality is we have a good independent system for determining admissibility, and we don't need it to be replaced at the whim of any minister.

What you've handed out here today, the handout we've just received—and just taking a cursory look at it, what struck me is that what you've handed out here are just guidelines. They will still be guidelines to you, with the discretion resting with you or with another minister.

Three times since I became the official opposition critic for immigration on refugee health cuts, on Bill C-31, and again on this legislation, you have introduced sweeping reforms only to have to backtrack under pressure. It is a clear sign that these reforms are being rushed through without proper consultation. We are hoping that on this piece of legislation you will be willing to listen to the stakeholders and the opposition to ensure that we have a piece of legislation at the end of the day that protects both Canadians and the rights of newcomers.

I notice, Minister, that your presentation gives some examples of some very egregious cases, which we agree with you we would want to have removed. However, I always hesitate when we make sweeping changes based on a few anomalies, instead of trying to attack those specific anomalies by fine-tuning the system.

On the note of consultation and listening to the opposition, my first question to you relates to your comments in the media last week when you promised to engage members of this committee on the section of this law that would allow you to bar foreign nationals from entering Canada for overly broad public policy considerations, which, I think even you must agree, captures almost everything in the world. While we appreciate the olive branch, my question is, why do we need this at all? Our border services already have the power to bar people who are a threat to our security or whose actions constitute crimes, including hate speech in Canada.

Would you be open to scrapping this ill-considered part of the legislation?

•(1605)

Hon. Jason Kenney: Well, no, I would not be open to scrapping our proposal to include some form of negative discretion, precisely because it seeks to deal with cases of individuals who are not otherwise inadmissible to Canada.

Let me begin by saying that I appreciate your generally constructive approach, Ms. Sims, and do hope that there will be a serious deliberative and legislative consideration of the bill. I regret that you characterize the government's willingness to amend immigration legislation in the past as "backtracking under pressure". Perhaps it's just that we're actually open and flexible to improvements.

It was a radical idea that we could actually improve legislation through the deliberative process. That's certainly been I hope my hallmark as minister, and I hope it will be so on Bill C-43, which is why I have tabled with you these proposed guidelines.

Now, let me say that the committee may recommend that we codify these guidelines in the bill, or that they be codified in regulation. But you're going to have to understand that there are implications to that.

So why can't we—to respond to your question, first of all—just allow border officials to apply the inadmissibility law? Because very frequently...and, you said, to apply the law, for example, of inadmissibility against people who might commit hate crimes. There are no grounds upon which to deny entry to Canada of a foreign national who we believe may commit hate crimes in Canada if they are not otherwise inadmissible—that is to say, if they do not, for example, have a criminal record in their country of origin for crimes that would also be crimes in Canada.

Now, let's say they've committed fraud crimes in Germany or something. That's something the CBSA can consider. But going around in a foreign country—you can pick any number of countries—calling for the murder of gays or Jews or women is not a crime in many countries, and therefore does not constitute grounds for inadmissibility.

Ms. Jinny Jogindera Sims: Thank you, Minister. You've answered my question. I really need to...

I have a very short time. I don't mean to be rude.

Hon. Jason Kenney: Sure. Sorry.

The Chair: Ms. Sims, you have about 30 seconds.

Ms. Jinny Jogindera Sims: I would like to know—maybe as the day goes on—why the need to concentrate more arbitrary power in your hands? Instead, could we not look at expediting the judicial process for removal without such broad new powers?

Hon. Jason Kenney: Again, if the committee wants to recommend that we codify in the bill something like the language I've proposed in these guidelines, I would be very interested to receive that recommendation. But you need to understand that if we do that, then it becomes a very rigid tool and it becomes highly litigious.

There will be cases undoubtedly that do not fall within this. When you look more closely at this, you may think these criteria are too

narrow. They are radically more narrow than the criteria for negative discretion that exist in our peer democracies.

Essentially, our proposal to allow for negative discretion on public policy grounds at the minister's discretion is designed to replicate the analogous power that exists in the U.K., Australia, the U.S., and New Zealand, where we have seen no significant abuse of that power.

The Chair: Thank you, Mr. Minister.

Mr. Lamoureux.

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

Mr. Minister, I see this, very much so, as an anti-immigrant bill. You have this sensational attitude of trying to make immigrants look as if they are a bad thing.

We can talk about the bogus refugees. This is something that you create, which sends very strong negative images in the minds of Canadians. We can talk about the illegal queue-jumping, or the boat people, in which you stand on the back of a boat, and you have mandatory detention, for which you did have to flip-flop.

Thank goodness you did do the flip-flopping. And it was because there was pressure at the committee stage from different organizations, many different law firms and so forth, that ultimately led you to make those changes. That is the reality.

At the end of the day, in Bill C-43 you term permanent residents, 1.5 million-plus individuals living in Canada, who call Canada home...and we call them foreigners. This is an attack on "foreign" criminals.

Then the minister goes out, Mr. Chairperson, and identifies these sensational cases—the rapists, the murderers, the pedophiles. Those are the ones in which the minister chooses to send this powerful message to Canadians.

What kind of message is he really sending to Canadians? What about the individuals who...?

Maybe there's a family of four where Johnny, who just graduated from university, has six plants of marijuana. That's the serious crime that's going to have six months and no appeal, and Johnny is going to be deported—

•(1610)

The Chair: On a point of order. Stop the clock.

As you know, I try to have a policy in this committee that we don't berate witnesses. Even though he's the minister and there is a certain political latitude, he is our guest, and we are honourable ladies and gentlemen. I hope that you will act as an honourable gentleman.

Go ahead, Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): You took care of my point of order.

Thank you.

The Chair: Thank you.

Carry on, Mr. Lamoureux.

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

I know that the minister might be a little sensitive about this and that members of the committee might be sensitive about this, but these are the types of expressions we hear within our caucus and from individuals who have come before the committee itself.

The minister has taken it upon himself to have a great deal more power. The simple question is how these cases will be flagged and brought to the minister's attention. There are new powers to the minister to prevent entry. What will be the checks and balances on the minister when he has this discretionary power? What is he actually putting in place? He has the ability to have the power to deny someone access.

He makes reference to a dictator. He doesn't want the dictator's wife to be able to come. What about the mother who has two children, one living in Canada as a Canadian citizen, another living in Chandigarh or the Philippines, whose spouse might be affiliated with organized crime? She is going to be labelled and told that she can't come to Canada because of her family member's behaviour, even if she is in a country where divorce might not necessarily be allowed. These are the ramifications of this legislation for real people. It's not just the rapists and murderers and so forth.

Did the minister take that into consideration before he labelled the bill? Why did he call it "foreign criminals" as opposed to "permanent residents" in the legislation? Wording is important. This minister has consistently chosen strong wording to send a message. The message isn't always positive. In the short term, you might be able to get the types of headlines you want, but it can be very damaging to the community as a whole.

I would ask him to provide comment in what little time is left.

Hon. Jason Kenney: I'll tell you what's damaging to communities, Mr. Chair. It's criminals who victimize Canadians. It is true that new Canadians are disproportionately the victims of crime committed by foreign criminals. That is why, as I mentioned, I announced the commitment to introduce this legislation, the Faster Removal of Foreign Criminals Act, in Vancouver's Chinatown in front of an ethnocultural media committee. That's probably also why my party received 42% of the support of new Canadians in the last election. New Canadians know that what we've just heard from Mr. Lamoureux is insulting. This notion that in dealing with foreign criminals we are somehow reflecting on the good faith and the law-abiding nature of the vast majority of immigrants to Canada is absurd.

Speaking of inflammatory language, Mr. Lamoureux knows perfectly well that to suggest that this government is anti-immigrant—

Mr. Kevin Lamoureux: It is.

Hon. Jason Kenney: —is bizarre.

Mr. Kevin Lamoureux: That's not true.

Hon. Jason Kenney: This is a government that has admitted over 1.8 million permanent residents since coming to office. It has welcomed some 1.3 million of them into Canadian citizenship. It has maintained the highest sustained levels of immigration in Canadian history and the highest per capita levels of immigration in the developed world. It is increasing the number of resettled refugees we accept by 20% and it has increased support for them. It has tripled

federal investment in settlement services and has taken real action to help with credential recognition.

Mr. Chairman, one of the reasons this government received a majority mandate disproportionately from new Canadians is that it is the most pro-immigration government in Canadian history. I know it doesn't suit the narrow political agenda of Mr. Lamoureux, but the truth is this: new Canadians are intolerant of those who abuse this country's generosity by violating the privilege of residency in Canada by committing serious crimes. They believe that people should get their day in court, but should not be able to delay their deportation for several years.

I would ask Mr. Lamoureux to think for a moment about the victims of these crimes. He somehow suggests that the examples we have cited are aberrations. Sadly, they're not. He raises the canard of someone convicted of possessing six marijuana plants, but he forgets to add, "with the intention of trafficking". I admit, Mr. Chair, that Parliament decided that if you are found by a criminal court to intend to traffic narcotics, to traffic illegal drugs, in Canada, that should carry a serious penalty of six months or more. Why? Because that's not done in isolation. It's typically an indication of involvement in organized criminality. An example is Jackie Tran in Calgary, who we removed after years of delay through the IAD appeal. He had people working for him who were cultivating marijuana plants—

• (1615)

The Chair: I'm afraid I've got to call you.

I'm going to ask all members of the committee—this meeting has become very adversarial, and I think members are entitled to ask questions of the... Yes, I'm looking at you, Mr. Lamoureux. This committee is entitled to ask questions of explanation of the bill. I don't want to hear too much more of this—you know, the Conservatives are better than the Liberals, or the Liberals are better than the Conservatives, are better than the NDP. It's not helpful.

If you get my point, it's taken a bad turn.

Go ahead, Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair.

Thank you, Minister Kenney and officials, for being here today.

I have to tell you that I come from a very diverse riding in Scarborough Centre, part of the GTA, and I can tell you that the policies that we're making within your department are resonating with my constituents. They would never think for a moment that this bill is anti-immigrant. They actually believe it's anti-criminal, and they come back to me every day with e-mails and letters saying that it's about time. So I applaud the changes that are in this bill and I thank you for bringing them before this committee.

I just listened to your opening remarks, Minister Kenney, and I'm very glad you highlighted the definition of serious criminality that's currently in the Immigration and Refugee Protection Act, or IRPA. Serious criminality is defined as being convicted of a crime punishable by six months or more. Is it not true that the changes within Bill C-43 are actually going to bring the Immigration Appeal Division in line with the rest of IRPA?

Hon. Jason Kenney: Well, yes. In fact, I would again point out that we do not propose in this legislation to change the threshold for what constitutes serious criminality under the Immigration and Refugee Protection Act.

In 2002 the previous Liberal government adopted IRPA, and at the time stated in the law that serious criminality was defined as those sentenced to a penalty of six months or more, or who were sentenced to a crime that could carry a maximum sentence of ten years or more.

However, in order I think to satisfy the immigration lawyers, they decided to allow for a delay tactic through an appeal to the IRB's Immigration Appeal Division. That delay tactic, and then a subsequent application for judicial review to the Federal Court, allows for foreign criminals convicted of serious crimes to delay removal by an average of two and a half to three years. That's two and a half to three years of time during which that foreign national, who has already been convicted of a serious crime by a fair Canadian court, can go on to commit additional crimes.

I think we have an obligation to the Canadian public to do everything we reasonably can within the law to prevent the opportunity for them to re-victimize new Canadians, and that's the premise of what we're doing. So yes, this does bring it into a sort of coherence with what I think is the basic framework of IRPA in terms of serious criminality.

Ms. Roxanne James: Now, you said that they allowed a delay tactic. I understand that IRPA was actually brought in by the Liberals back in 2002—correct me if I'm wrong—and when you say they allowed a delay tactic...do you know why the Liberals would have put in this timeframe for this particular piece, different from the rest of IRPA at that time? What would be—

Hon. Jason Kenney: Well, I do know that at the time, former Minister Elinor Caplan was under massive pressure from victims organizations and police organizations because of the Just Desserts murders, where certain violent convicted foreign nationals, while delaying their deportation from Canada, had shot up a Just Desserts restaurant in Toronto claiming I forget how many victims. So there was a great public demand to do what we are now proposing, to streamline the appeals process so that we could more quickly remove foreign criminals.

But then there was a huge counter-lobby from the immigration lawyers, and as we've just heard from Mr. Lamoureux, they were

typically an interest group, a special interest strongly supportive of the last government. I think they persuaded Minister Caplan to include this ability to appeal to the IAD for foreign nationals who receive convictions of between six months and two years.

Let me point out that many courts have actually given foreign nationals sentences of two years less a day, with what is pretty clearly the expressed intent of allowing them access to this appeals process. That is to say that someone who might otherwise have received a longer sentence is actually given a lighter sentence precisely so they can delay their removal from Canada. This has actually had, I think, a negative influence on strict sentencing for foreign criminals convicted of serious crimes.

• (1620)

Ms. Roxanne James: Thank you very much.

During second reading debate, I listened to much of what was being said by both the NDP and the Liberal MPs who spoke on this bill. They actually claimed that the number of serious criminals appealing to the Immigration Appeal Division each year was very small. Of course, they didn't define what very small meant and they didn't come with any facts or figures or statistics.

When I think of small, I think of a handful. I think if it were only a handful, Canadians should not be that concerned. I'm just wondering if you're able to provide any facts or statistics over the last number of years of what the actual numbers are. I know for sure that if it's greater than... I mean, if it's greater than 25, to me, that's outrageous. If it's greater than 100, I'm sure most Canadians would be concerned if that was the case.

If you could please tell us if you have those facts with you today...

Hon. Jason Kenney: In terms of numbers, if you were the immediate family member of the late Toronto Police Constable Todd Baylis, one is too many. I find this idea of minimizing the issue ignores the suffering of the victims of repeat crime from these individuals, delaying their deportation.

In terms of the actual numbers, we have in the last few years averaged 850 appeals to the IAD by foreign nationals who have received serious convictions under IRPA. There are currently 2,700 pending for the IAD, and it takes about 18 months for an IAD appeal to be heard and decided.

Let's put this in perspective. As I said earlier, this is a tiny fraction of the overall number of immigrants. I mean, 850 immigrants out of let's say a quarter of a million is about .03%. It's a fraction of a percent, which is why I find so offensive the notion that we're hearing from some members to conflate this tiny fraction of criminals with the enormous majority of law-abiding immigrants. I think that's profoundly offensive. On the other hand, I think 850 a year is a significant number.

Ms. Roxanne James: Do you think, Minister Kenney, that Canadians—who may be tuning into this committee or who may hear about it at some point in the future—on a whole would think that 850 is a very small number, or do you think they are going to feel like I do right now: shocked at that particular figure you just gave?

Hon. Jason Kenney: Well, I suspect they would say, “Why is there one?”

The Chair: Thank you.

[*Translation*]

Go ahead, Ms. Groguhé.

Mrs. Sadia Groguhé (Saint-Lambert, NDP): Thank you, Mr. Chair.

My thanks to the minister—

[*English*]

The Chair: A point of order.

Ms. Sitsabaiesan.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): I apologize to my colleague, but I must raise a point of personal privilege before we continue.

I am profoundly offended by the comments made by the member opposite as well as the minister. I myself have been a victim of crime by somebody who was a permanent resident at the time. I'm profoundly offended when the minister says that all of us in the NDP caucus do not understand the needs of victims and don't look at victims of crime.

It's a point of personal privilege. Mr. Chair, I would like to ask you to ask the member or the minister to withdraw that statement from the record, please, because I am profoundly, personally offended by that comment.

•(1625)

The Chair: As you may or may not know, I don't have the right to rule on points of privilege. The committee would have to go to the Speaker on such a request. I do have the right, however, as chairman to say that some of the comments that have come from all sides... You know, once one starts, then the other starts, and then this goes back and forth, and then the chairman has lost control of the meeting.

I don't have the right to rule on that. I will say, however, that some of the comments as to what one government did or another government did or what one party did are totally inappropriate. It only aggravates everybody and then we have a bad meeting.

I'm going to ask Madame Groguhé to proceed with her questions.

Thank you.

[*Translation*]

Mrs. Sadia Groguhé: I hope I will get all my speaking time, Mr. Chair.

My thanks to the minister and his officials for being with us.

Certainly, this bill raises concerns. One of the things I would like to know is how, in a constitutional state, the faster removal of foreign criminals can be achieved without the denial of the right to a defence for those concerned. In other words, how do you intend to reconcile faster removals with the guarantees provided by the Charter to people on Canadian territory?

Hon. Jason Kenney: I would just remind you that a citizen of another country who—

[*English*]

I'll do this in English. I'm sorry, there are some technical and legal terms.

A foreign national who is subject to the inadmissibility provisions of IRPA will have their day in a criminal court. They will benefit from all of the normal due process and natural justice of our criminal courts before they receive a sentence of, say, six months or more. They can even appeal that decision, so they have natural justice.

Furthermore, even after the streamlining of the appeals process that is proposed in this bill, they would have access to a pre-removal risk assessment to ensure they would not face a risk to their life or safety if returned to their country of origin. They could appeal a negative pre-removal risk assessment to the Federal Court as well.

I guess my answer would be that there are all the normal legal safeguards that currently exist to respect their rights.

[*Translation*]

Mrs. Sadia Groguhé: My second question is about the principle of non-refoulement to torture, a standard that no national legislation must contravene.

Do the provisions of Bill C-43 comply with that principle and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment? If so, how?

Hon. Jason Kenney: As I have already said, all foreign criminals who are declared inadmissible to Canada on serious grounds have the right to a pre-removal risk assessment. This process is separate from the process used to decide criminal matters. So if a criminal court in Canada imposes a sentence of more than six months, the Canada Border Services Agency issues a removal order against those individuals. But they have the right to a pre-removal risk assessment. That is an analysis is conducted to determine whether they are liable to face torture or whether their lives may be in danger if they are returned to their countries of origin.

If the pre-removal risk assessment is rejected by an independent and well-trained officer of our department, affected individuals may apply to the Federal Court for a review of the pre-removal risk assessment. That is how things will work, even after these amendments.

Mrs. Sadia Groguhé: How can this bill make a clear distinction between political imperatives, in terms of the decisions you will be making with this increased discretionary power, and the principles of the rule of law? How are we going to guarantee those considerations?

• (1630)

Hon. Jason Kenney: Well, all discretionary decisions made by the minister are based on legislation approved by Parliament. In addition, the minister is responsible to Parliament and to Canadians when he exercises that power.

I would remind you that most MPs approach me to use my discretionary power to allow certain foreign nationals into Canada. MPs ask me, for example, to issue temporary residence permits to foreigners who have applied for visas. So MPs want the minister to have some discretionary power. Our proposal is to give the minister the equivalent power to deny entry to Canada to some people under certain circumstances.

Mrs. Sadia Groguhé: It really deals with the notion of admissibility.

Could you clarify the question of extradition and deportation? Extradition is a tool that can be used in some cases, for example, when people who have committed crimes against humanity are detected on our territory.

[English]

The Chair: You're way over. Can you wind up?

[Translation]

Mrs. Sadia Groguhé: That's it? So clarify the matter for us.

Hon. Jason Kenney: The bill does not deal with extradition. That is the Minister of Justice's responsibility. Under agreements we have with some foreign countries, we extradite people only following a request from a country with which we have an agreement.

[English]

The Chair: Thank you.

Mr. Weston.

[Translation]

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): Thank you, Mr. Chair.

Welcome once again, Mr. Minister.

[English]

It seems to me that you're standing in the centre between two opposite and competing forces. On the one hand, people in the riding I represent, West Vancouver—Sunshine Coast—Sea to Sky Country, want you to usher in people to work at the pulp and paper mills, Catalyst Paper and Howe Sound Pulp and Paper, and you're aware of that and you've been changing our rules to foster the immigration of people to take those roles.

In terms of the hospitality industry, you've heard the cry for relaxed rules to enable people to come and work in the Sea to Sky Country, Whistler, and west Vancouver, and then we want tourists to come.

Whatever the type of foreign person, you've been asked to usher them in, and you've responded to the call and have made changes. But at the same time, we expect our department to select immigrants. To select means to make a distinction between those we want in and those we must exclude, so it seems only natural that we come to this point.

I have two questions, Minister, in that context.

First, I've practised law overseas for a decade and seen how people felt perplexed that we were so relaxed in how we dealt with people who lied on their applications. One of the changes you propose in this bill is to finally impose consequences, that those who make misrepresentations must wait two to five years before they can apply again. My first question is, would you please explain how that would work?

Secondly, and this goes right to some of the comments we've heard from my colleagues from the other parties this afternoon. I'm astonished, and many Canadians are astonished, that CSIS could not compel an interview of someone who was identified as a possible security threat in Canada under the current legislation, and your bill proposes to change that.

[Translation]

Can you discuss the changes in those two areas?

[English]

Hon. Jason Kenney: Thank you for raising two other aspects of the bill, Mr. Weston.

First of all, under the current provisions of IRPA, someone who is found to have engaged in misrepresentation, in, for example, making an application to visit or immigrate to Canada, can be barred from applying for two years. We are proposing to raise that benchmark to five years because, as you likely know, fraud in the immigration program is a very serious problem.

One of the reasons in some parts of the world we have a fairly high rejection rate for temporary resident visas, for example, is because of the number of fraudulent applications that are often submitted by unscrupulous or crooked immigration agents operating abroad. There is an entire industry, as we know, that will produce, as I pointed out before, everything from fake bank transcripts to fake flight itineraries to fake death certificates or wedding certificates—fake just about everything. It's that industry that really creates serious problems for the efficient administration of our immigration laws and for legitimate, bona fide visitors who want to come here.

We need to send a clear message to people here and abroad that if you are going to commit fraud in an application, there will be serious consequences. You won't be able to apply to come back for five years. This is not going to apply to people who just make a mistake, a good faith error, who forget to enclose a document or make a minor error. It's for those who clearly have the intent to misrepresent. This is why we've increased the penalty.

With respect to compelling people to attend a CSIS interview, I'd like to invite Public Safety perhaps to supplement that.

•(1635)

Ms. Emmanuelle Deault-Bonin (Acting Senior Director, National Security Policy Directorate, Department of Public Safety and Emergency Preparedness): Thank you, Mr. Minister.

As you pointed out, what the bill seeks to do here is to establish a clear statutory obligation on foreign nationals who make an application on their IRPA to appear for an immigration security screening interview with CSIS when that is requested by CBSA or CIC.

The purpose of this amendment is to enhance the security and safety of Canadians by ensuring that CBSA and CIC continue to benefit from CSIS's advice.

In terms of your question, CBSA and CIC officials already benefit from CSIS's advice on security screening. We're simply making sure that the obligation to appear for those interviews is clearly set in law.

The Chair: Thank you.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chair, and thank you, Minister, for appearing before us again today. My thanks as well to the officials who are here with you.

Minister, we've heard a lot of comments leading up to today's meeting. We heard some comments today about sweeping changes based on a few anomalies, comments about an anti-immigration bill. I want to hone in on those comments, because I take quite a bit of offence to these comments.

I am a proud Canadian of immigrants to this country. The great constituents of Richmond Hill elected me to be here. I represent a party that is represented in the House. Among the members of the Conservative Party, there are 28 languages that are spoken fluently.

The notion of being anti-immigrant, or that we don't want immigrants, combined with the fact that our government has accepted 1.8 million new Canadians into our country, contributing every day to society, in a very positive way, I might add...it certainly does not lend any credibility to some of the comments that we've heard here today.

I want to hone in on the notion, which some would have us believe, that someone who is convicted of six months in jail or more is not a serious criminal. The claim is that if a teenager is found with a bit of marijuana he will be severely impacted by this bill, which, by the way, I think is very appropriately named the Faster Removal of Foreign Criminals Act. I heard a lot about this bill from my constituents after your announcement, Minister, and I can tell you

every single person who has spoken to me has been very favourable, and I represent one of the most diverse constituencies in this country.

Minister, could you clarify, please, if in fact it is true that people who are not serious criminals are going to be severely impacted, and that the bill does address those who have committed sexual offences against children, weapons charges, assault, fraud, and theft, among many other serious crimes?

•(1640)

Hon. Jason Kenney: Yes, you're quite right.

I'll once again reinforce for the committee, Mr. Menegakis, that Bill C-43 does not propose to change the definition of what constitutes a serious crime under the Immigration Refugee Protection Act. It keeps the same definition.

I find there's a certain cognitive dissonance here. Some of the critics have been suggesting that a penal sentence of six months is insufficient to define a serious crime, but that has always been the law under IRPA. An op-ed written by our colleague Mr. Cotler from Mount Royal published a couple of days ago suggested that it was outrageous that we should lower the bar for serious criminality in IRPA to six months. We're not lowering the bar. We're maintaining the bar that Mr. Cotler himself voted for in 2002.

Mr. Kevin Lamoureux: Two years.

Hon. Jason Kenney: No, Mr. Lamoureux is not correct. It is not two years. There is a fundamental misunderstanding. I invite members to actually read the act, which defines in section 36(1):

A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

This is the law that was adopted in 2002, defining a six-month sentence as constituting a serious crime. We are not changing that.

As for the crimes that are affected, they include indictable offences that carry a punishment of at least 10 years, including homicide, aggravated assault, drug trafficking, fraud, or theft over \$5,000. All offences involving firearms or other weapons carry at least one year of imprisonment, and thus would be captured by the new six-month bar. Sexual offences against children that are prosecuted by indictment will receive six months or one year as a minimum sentence; therefore, these offenders would also be captured by the six-month bar.

Mr. Costas Menegakis: You referred to two cases: that of Constable Todd Baylis, and that of the Just Desserts massacre in Toronto. In the case of Just Desserts, I should tell you that Georgina “Vivi” Leimonis was the one person who was murdered in that event. It was tragic, and 3,000 people were at her funeral, one of which was me.

She was a very vibrant young lady from the Greek community in Toronto, 23 years old, with a very bright future.

Can you tell us what you've heard from victims—

The Chair: Thank you, Mr. Menegakis. I'm afraid we're over, but thank you for your comments. We have to move on.

Ms. Freeman.

[*Translation*]

Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP): Thank you, Mr. Chair.

Thank you for appearing before our committee, Mr. Minister.

I would like to talk to you about the five main reasons that justify the introduction of this bill. According to a document I found on the Department of Citizenship and Immigration's website, this is actually about five individual cases. I understand that those are five cases too many. But I am curious to know how widespread the situation is.

If this legislation is changed, will it affect more people than those involved in cases like this? I would like solid, factual information to be sent to the committee.

Hon. Jason Kenney: Thank you, Ms. Freeman.

I would like to take this opportunity to say how sorry I am about what happened to Ms. Sitsabaiesan. When I said that concerns for the victims had not been raised, I was talking about the debate on the bill in the House. Frankly, I congratulate the New Democratic Party for voting for the bill. I hope that we will be able to work to improve it, if there are good suggestions.

To answer your question, madam, I have to point out that, in recent years, an average of 850 applications for appeal have been made to the Immigration Appeal Division of the IRB by foreign nationals who are inadmissible on grounds of criminality. That is a little under 1,000 people per year. Yes, we published a list of five cases, but I can give you a list of dozens, hundreds, of similar cases.

• (1645)

Ms. Mylène Freeman: What worries me—

[*English*]

The Chair: I'm going to stop the clock for a moment.

I want to apologize to the committee. Ms. Sitsabaiesan raised a question of privilege and I may have advised the committee something that was incorrect. I do have the right to rule on a question of privilege. The committee has to agree with me or not agree with me. If the committee agrees with me, then it goes as a motion to the House.

On her particular question of privilege, I wouldn't have ruled in her favour. But I did slightly mislead the committee, and I just want

to be clear on that. I have the capability of ruling on a question of privilege, but it does have to go to the Speaker.

According to O'Brien and Bosc:

The Chair of a committee does not have the power to rule on questions of privilege; only the Speaker has that power. If a Member wishes to raise a question of privilege during a committee meeting or an incident arises in connection with the committee's proceedings that may constitute a breach of privilege, the committee Chair allows the Member to explain the situation. The Chair then determines whether the question raised in fact relates to parliamentary privilege. If the Chair determines that the question does relate to parliamentary privilege, the committee may then consider presenting a report on the question to the House.

I apologize. I wasn't quite accurate in saying I didn't have the right to rule on it. Well, I was right and wrong.

You still have about a minute and a half.

Mr. Dykstra has a point of order.

Mr. Rick Dykstra: It's just an addition to your comments with respect to your decision-making ability. Suffice to say, while you wouldn't have ruled in favour of Ms. Sitsabaiesan's question of personal privilege, the minister did take time to respond to her concern and did apologize.

Perhaps if Ms. Freeman could have an extra minute or so added on to her time, it would make up for the time that the minister did acknowledge and clarify exactly what his comments were.

The Chair: You have the floor, Ms. Freeman.

Ms. Mylène Freeman: Great. Thank you very much.

[*Translation*]

What worries me is that Bill C-43 will certainly affect those 800 or so people. Can you confirm that it will not affect others?

Hon. Jason Kenney: Those provisions are in the bill. As I said, we are not changing the definition of serious criminality in the Immigration and Refugee Protection Act. In fact, paragraph 36(1)(a) of that act states that foreign nationals are guilty of serious criminality if they have been convicted of an offence punishable by a maximum term of 10 years or if a term of more than six months has been imposed.

So we are keeping the same definition. The only difference is that we are removing the access to the Immigration Appeal Division. It in no way affects their right of appeal in the criminal justice system.

Ms. Mylène Freeman: I think my colleague Mr. Lamoureux touched on the question of denial of entry to Canada. Take his example of the wife of a man linked to a criminal group, who would be considered a victim and who might try to enter Canada. How would this affect that woman? Have you considered situations like that?

Mr. Lamoureux raised the question but I did not hear an answer.

• (1650)

Hon. Jason Kenney: By applying the power that is proposed, we can consider extraordinary situations. But you have to remember that opposition MPs have criticized the government for granting entry to Canada to close family members of dictators like Mr. Ben Ali. So we are replying to those criticisms by providing for a power that, under exceptional cases, allows us to deny entry to Canada, for security reasons, to some foreign nationals who have links to organized crime. However, we really are talking about extraordinary situations here, I believe.

For example, if a member of Colonel Gaddafi's family had tried to enter Canada after he fell from power, this legislation would have been able to prevent it. But we do not currently have that power.

Ms. Mylène Freeman: It is important for me to emphasize that we are giving our support to this measure as it applies to members of a family that is part of an oppressive regime, because they are often involved in the oppression. Of course, they are not the kind of people we would want to see taking refuge in Canada. But I am concerned, for example, for the spouse of someone who might be involved with the gangs in Mexico.

I hope that your guidelines will allow a degree of discretion. Are you afraid to include guidelines like that in the bill?

Hon. Jason Kenney: That is exactly why we are providing some discretionary powers. It is so that we can consider exceptional cases.

For example, take the case of a mafia family. We are talking about organized crime. Frankly, I think that it is unlikely that a mafioso's family would be unaware of the criminal activity. This power would let us tell people close to a member of the mafia that they do not have the right to enter Canada.

[English]

The Chair: We're well over seven minutes; I've been overly generous to you.

Mr. Leung.

Mr. Chungsen Leung (Willowdale, CPC): Thank you, Chair.

Thank you, Minister and staff, for appearing.

I wish to explore a bit further these crimes that we talked about.

In my riding, which is predominantly 60% visible and non-visible minorities, we often encounter situations whereby the older established immigrants will prey upon the new ones, inducing them to invest in investment funds that turn out to be bogus. You and I both know the case of Mr. Tang Weizhen, who absconded with \$60 million.

Could we focus more specifically on some white collar crimes, like credit card fraud, counterfeiting, investment funds that don't turn out, and the buying and selling of stolen articles? There are those white collar crimes. How would we deal with permanent residents who are preying on new immigrants?

Hon. Jason Kenney: I would point out that with serious white collar crimes—it doesn't matter whether it's sophisticated fraud or what have you—if the sentence is for six months or more, it would be defined currently under IRPA as a serious crime. That person would receive an inadmissibility report and a removal order from the

CBSA. The only difference in the future is that they will no longer access the Immigration Appeal Division and subsequently the Federal Court, in order to delay deportation for several years.

I think you make a good point. We do have victims of non-violent crimes, of so-called white collar crimes. Again, as you point out, very frequently the victims are new Canadians, who, perhaps because they're not entirely familiar with Canada's legal system, or perhaps for linguistic reasons, are sometimes more vulnerable to various forms of financial fraud. I think this is an important measure to help protect those individuals.

• (1655)

Mr. Chungsen Leung: So the six-month sentence is across the board for all kinds of crimes.

Hon. Jason Kenney: Yes.

Mr. Chungsen Leung: Let me move on, then.

We mentioned our peer countries that have similar criminal codes, like the United States, or the British common law jurisdictions, like the U.K., Australia, and New Zealand. Are you aware of any of them having the same negative discretions in place? How do they interpret their policies? Are they broader in scope than ours, or similar? Then to follow on to that, is only a minister permitted to make those discretions, or are there also immigration officers who can make that discretion?

Hon. Jason Kenney: In terms of the analogous power to what we propose, it's the minister's, or, in the case of the United States, the Homeland Security Secretary's.

In the United Kingdom, the Home Secretary has the power to personally order an individual excluded from the United Kingdom in cases where their presence—and this is the language—would not be “conducive to the public good”. It's very broad, isn't it? For example, this can be done on the basis of national security, foreign policy, public order, or serious criminality. The secretary does not delegate this power to other officials—does not.

In Australia, the Minister for Immigration and Citizenship has various powers to act personally in the national interest. It is up to the minister to determine whether a decision is warranted. In addition, Australia's immigration law allows for visa refusals based on foreign policy interests and the likelihood that an individual will promote or participate in violence in the community.

In the United States, the Secretary of State—excuse me, not the Homeland Security secretary, but the Secretary of State—may direct a consular officer to refuse a visa if necessary for U.S. foreign policy or security interests, while the Secretary of Homeland Security can delegate the authority to immigration officers to revoke a visa. Additionally, the President may restrict the international travel and suspend the entry of certain individuals whose presence would be considered detrimental to the U.S.

Let me make another point. My experience, having been a parliamentarian for 15 years, is that most Canadians, and in fact most parliamentarians, think the minister or the government already has this kind of discretion, which is why, whenever we get cases like those of some of these hate-mongers seeking to enter the country, I'm lobbied by parliamentarians and members of the public to deny their entry: because they assume that there is this sort of generalized power.

Let me finally add that, as I said in French, I'm constantly, every single day.... You all see that after question period there is a crowd that forms around my desk. I wish I could say that it's people congratulating me on my good answers, but instead, they are colleagues of ours typically asking me to grant what are called "ministerial permits", which is the exercise of an unlimited ministerial discretion in IRPA to effectively override negative decisions by visa officers.

I hear no complaints from parliamentarians when it comes to the positive exercise of discretion, and essentially what we're proposing here is an analogous negative power of discretion, which would be used, frankly, at most, in a handful of cases each year.

The Chair: Where's my clock?

Mr. Chungsen Leung: Am I over...?

The Chair: I'm afraid you're over the time, sir.

Mr. Menegakis.

Mr. Costas Menegakis: Thank you, Mr. Chair.

I'm glad I have another opportunity, Minister, because I want to continue with my train of thought and the questions I was asking when I ran out of time previously. I want to focus a little bit on the victims of some of these crimes.

I know that we're speaking a lot about criminals and how we want to keep out criminals and so forth, but there is an impact on society and there is an impact on families. For the parents of Constable Todd Baylis, and certainly for his fiancée and the people who loved him and cared for him, not to mention the very courageous men and women who serve in our police service, I know how much they were impacted by that tragic shooting of Todd Baylis by a man who had garnered a stolen gun.

I also want to speak a little bit about Georgina—or Vivi—Leimonis. What I was saying previously was that she was a 23-year-old and a very vibrant young lady who, at 11 o'clock in the evening, was sitting at a table in a Just Desserts restaurant having dessert and coffee with her fiancé. An argument broke out as three gentlemen—criminals, not gentlemen.... An argument broke out as three criminals walked in and wanted to rob the place. Gunfire ensued, and Vivi—Georgina's nickname—was shot some 200 times from a

distance of no more than three metres. It was absolutely tragic, and it struck her and her family more than anybody else, but I can tell you that the entire community, and indeed, not only the Greek community but the entire GTA....

I'd be very interested in hearing from you, Minister, about what you've heard from victims' groups. Politicians are politicians and we can say our thing—we're supporting a bill or we're not supporting a bill—but we are representing people here, and it's the people who give us the right to have an opportunity to represent them. I'd like to know what you hear from them.

• (1700)

Hon. Jason Kenney: Yes, we have. In fact, let me tell you something honestly. The genesis of this bill was probably shortly after I became minister four years ago—four years ago this week. My goodness.

I was approached by members of the Vietnamese community in Calgary whom I knew who were outraged that a notorious gangster named Jackie Tran, who had multiple criminal convictions, had successfully delayed his deportation through precisely these IAD appeals.

Jackie Tran, like many sophisticated crime bosses, was smart enough to get other people, often young people, to do his dirty work for him, so he never got picked up on a major offence such as murder, although it was well known that his thugs were responsible for many gangland murders of the kind you just described. The community was being terrorized because he and his gang, the so-called "Fresh Off the Boat Killers"—their own name—were going around terrorizing Vietnamese shop owners and people in the community.

The community came to me and said to me, "Why are you allowing Jackie Tran to stay in Canada?" I went to the department and asked, "Why are we allowing Jackie Tran to stay in Canada?" They said, "Well, Minister, here's the case, and here's how he's been able to delay his removal by appealing to the IAD." Maybe there was a technical problem and it got sent back; then they went to the Federal Court, and that got sent back. It went on for years. I think the case of Jackie Tran went on for nearly six years of delay.

So, Mr. Menegakis, the departmental officials will tell you that I've been bugging them about coming up with amendments like this now for the better part of four years, and it came out of what I learned about the Jackie Tran case, about the victims—the indirect murder victims—of his gang in Calgary.

This is why, for example, Sharon Rosenfeldt, president of Victims of Violence, has said that Victims of Violence supports Bill C-43 and is very pleased with the government's announcement of changes to legislation that would make it easier for the government to remove dangerous foreign criminals from our country:

As an organization that works with victims of violent crimes and their families, we applaud this proposed change. We feel that streamlining the deportation of convicted criminals from Canada will make our country safer. Limiting access to the Immigration and Refugee Board's Immigration Appeal Division...is an important proactive step in ensuring the safety of all Canadians.

I have a long list of other endorsements from similar organizations.

The Chair: Thank you.

Ms. Sitsabaiesan.

Ms. Rathika Sitsabaiesan: Thank you, Mr. Chair.

The majority of newcomers to Canada are law-abiding members of our society, and I believe that our legislation should not portray them negatively. Rather, I believe that Citizenship and Immigration Canada, the CBSA, and law enforcement should have the resources they need to keep us safe from criminals of all backgrounds.

Auditor General reports since 2000 have highlighted problems in the way our immigration laws are administered and in who actually gets into the country. Auditor General reports reveal that Canada's immigration system has problems not necessarily because of legislation flaws, but rather because of the way our laws are administered.

Reviewing Citizenship and Immigration Canada and the Canada Border Services Agency, the 2011 Auditor General's report showed that there is little training or formal training curriculum. Moreover, there is "little stability at the senior levels to provide [guidance] and on-the-job training". There is also a lack of coordination of efforts between departments and no quality assurance framework or performance reviews.

Changing the law without addressing the problems currently in existence in the administration of the law is a serious concern and leaves little assurance for us and Canadians that our system will be better or more secure.

My question for you, Mr. Minister, is, how have these issues, highlighted by the Auditors General over and over again, contributed to the government's inability to track, detain, and remove serious non-citizen criminals?

• (1705)

Hon. Jason Kenney: Mr. Chairman, Ms. Sitsabaiesan raises some very important points.

I take seriously the recommendations of the Auditor General. My department has accepted them all and either has already started to implement or will implement the recommendations that she made.

I know the committee has been studying, prior to Bill C-43, the whole question of immigration security. I would point out that one of the real challenges we've had is the lack of biometric visas and the lack of an exit information system; these are the two biggest reasons explaining why we have had some unacceptable gaps in our immigration security system.

We have announced, in the context of the Beyond the Borders agreement with the Obama administration, our intention—and of course Parliament has given us the legislative authority—to introduce biometric visas next year, which will help us prevent readmission into Canada of deported criminals. Furthermore, an exit information system will massively improve our ability to police those who have overstayed in Canada, including those who may pose a security risk.

We're making big investments here. It's not just a rhetorical commitment; it's a big fiscal and policy commitment.

Ms. Rathika Sitsabaiesan: The lack of quality assurance checks is particularly alarming. Paragraph 2.49 of the Auditor General's report reported that CBSA's senior analysts are reviewing less than one percent of the temporary resident cases.

Wouldn't a review of the decisions about people who are coming into Canada be an effective way of protecting people, especially if officers are not receiving adequate training? Instead, we're seeing this government taking away the right of appeal from permanent residents, including youth who may have spent the majority of their lives in this country, who may have grown up in this country, and the removal of whom could lead to a great judicial backlog in our country.

Hon. Jason Kenney: Thank you. On the first point I would like to refer to Mr. Hill.

Mr. Peter Hill (Director General, Post-Border Programs, Canada Border Services Agency): Thank you very much.

I would say at the outset that the agency takes very seriously the recommendations of the Auditor General, and we have developed management action plans to address all of those recommendations and observations of the Auditor General, including those in the area of training. I'd be happy to provide the committee with further detail on the progress the agency is making in addressing the Auditor General's requirements.

I would say that the agency's performance in the area of removals over the last five years has demonstrated significant progress in addressing some of the concerns raised by the Auditor General. Last year, for example, the agency removed 16,500 individuals, including 12% who were criminals. That's approximately 1,900 criminals who were removed from Canada as part of the agency's enforcement mandate for immigration and refugee laws.

The Chair: Thank you, Mr. Hill.

Mr. Lamoureux, Ms. James has agreed that you can have two of her seven minutes.

• (1710)

Mr. Kevin Lamoureux: Here are three quick questions, Mr. Minister. If you could provide, to the best of your ability, an answer to them, I would appreciate it. New powers of the minister to prevent entry is what I want to focus on.

What are the checks and balances on the minister and on this discretionary power going to be?

Second, how will these cases be flagged and brought to the minister's attention?

The third and final question is, how many permanent residents appeal a court decision in which a sentence is two years or less under the current system of a year?

Hon. Jason Kenney: On the last question, the answer is that an average of 850 foreign nationals appeal a removal order based on inadmissibility for reasons of serious criminality. For example, in 2009, it was 1,086 people; last year it was 564. But on average it's 850. There are currently 2,747 appeals of inadmissibility on grounds of serious criminality pending before the Immigration Appeal Division.

On the earlier questions, about what would circumscribe the minister's discretion, frankly, his or her accountability to Parliament and to law would; the decisions cannot be made in a capricious manner.

The cases would be brought to the minister's attention, presumably in most cases by the Border Services Agency, but frankly, often these things arise in the media. Usually, when we're talking about some crazy hate-monger who is coming into Canada, I hear about it from members of a particular community who are concerned that this person is coming in. They will contact us through MPs or they'll make it known through the media.

The point I have made before is that there already is very broad discretion under IRPA in terms of positive discretion: it's the power of temporary resident permits—which, I point out, I have used much more sparingly than any of my predecessors, I think. Last year I think I issued fewer than 100 temporary resident permits under ministerial authority.

The negative discretion would be an analogous authority, in the sense that it would be broad but would be used with great discretion.

The Chair: Thank you.

Mr. Hill, that's the end of the two minutes, I'm afraid. Just so I'm clear, I think you undertook to give the committee the progress of the department since the AG's report.

Mr. Peter Hill: Yes.

The Chair: Could you give that to the clerk soon?

Mr. Peter Hill: I would be happy to.

The Chair: I will just remind the committee that this meeting will conclude at 5:25. We've got some committee business that won't take long.

Ms. Sims, you have a point of order.

Ms. Jinny Jogindera Sims: I have a point of order. I was wondering if the minister and the staff could make available to us statistics relating to deportations and appeals.

Thank you very much.

Hon. Jason Kenney: Yes, I have some of those stats here, but if you have precise questions, we'd be happy to provide the answer in writing.

The Chair: It's not a point of order, but he's going to give it to you.

Ms. James, you have up to five minutes.

Ms. Roxanne James: Thank you, Mr. Chair.

Minister, I have to tell you I was very shocked to learn that criminals who have been inadmissible on the most serious grounds—war crimes, human rights violations, and organized crime—have

delayed their deportation from Canada by filing on humanitarian and compassionate grounds. I find this very disturbing. Not only is this contrary to Canada's "no safe haven" policy, it's completely unacceptable. When I think of the term "humanitarian", war criminals, human rights violators, and organized criminals do not come to mind. I'm wondering if you could please give us your comments on that.

Also, because of the ability of those types of foreign nationals to apply on those types of grounds, what does that do to those who are filing or appealing under humanitarian and compassionate grounds, who are doing it in good faith and are genuine cases? Could you comment on that, please?

Hon. Jason Kenney: Thank you.

Certainly, eliminating access to the humanitarian and compassionate process for people such as war criminals and those involved in crimes against humanity *inter alia* would reduce the volume of applications, and that would help speed up processing for the legitimate immigrants who may be facing removal for much less serious reasons.

My view on this, Ms. James, is simply that Canada is a very compassionate country, but there should be limits to our compassion. I don't think we should extend this notion of compassionate consideration to war criminals, and that's essentially the rationale for the amendment.

I was shocked when I learned this too. I couldn't quite believe it. For me, it reflected a whole lot of problems that had built up in our system, this erring very significantly on the side of the rights of even the most serious kinds of criminals, as opposed to Canada's national interest.

• (1715)

Ms. Roxanne James: I'm going to speak of a specific individual, Mahmoud Mohammad Issa Mohammad. He carried out terrorist acts for the Popular Front for the Liberation of Palestine. Despite his connections and links with terrorism, which are not disputed, he has been able to remain in Canada since 1987; that's 25 years. How has he done this? He's done this through judicial appeals at a cost of \$3 million to Canadian taxpayers.

Minister Kenney, what's wrong with this picture?

Hon. Jason Kenney: A great deal. Mr. Mohammad is the poster boy for what's wrong with our system, and the fact that he's been able to delay removal now for 26 years after having lied his way into this country, having a terrorism conviction in Greece, by the way, and after having been released from prison because other terrorists hijacked another plane to demand his release...that he's here 26 years later makes a mockery of our system.

Ms. Roxanne James: Do you think Canadian taxpayers should foot that bill?

Hon. Jason Kenney: No, I don't think someone like that should be able to stay here for 26 years. As I said before, even terrorists, given our tradition of the rule of law, deserve their day in court. They certainly don't deserve 26 years, metaphorically speaking, in court, and that's what we've seen in this case.

Frankly, there were operational screw-ups in this case, which I find totally unacceptable and I've asked to get to the bottom of them. Some of the delays are just inexplicable, and these go way back under multiple governments. Part of the problem, though, was policy—part of the problem we're trying to fix with some of these amendments and other amendments we've made.

Ms. Roxanne James: Thank you very much.

Do I have any time left? A minute?

This is a very random question. When we talk about the cost to taxpayers on this particular case, it's not just the \$3 million; it's the 25 years and the tying up of our legal system.

I'm wondering if you have any idea how long it takes the average Canadian to actually earn and save \$3 million?

Hon. Jason Kenney: No, I don't, but it's probably a whole lifetime, I imagine.

Ms. Roxanne James: Thank you very much.

The Chair: You have the final word, Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

Minister, as I said, I really do appreciate your being here today. We don't often get the opportunity to sit with you in the same room at committee and ask you some questions directly. You have been very, very generous with your time today.

With the indulgence of the chair, I would like to veer from Bill C-43 slightly for a moment.

Minister, the question I have for you is this. At least two conservative MPs have sent taxpayer-funded newsletters to their constituents bragging about cuts to health care for vulnerable refugees. I asked about this during QP, and the reason I'm asking it again is because you were not here—

The Chair: This isn't even close to the bill.

Ms. Jinny Jogindera Sims: As I said, I'm asking nicely. We don't often get the minister here.

The Chair: I'm asking you nicely to stick to the bill.

Ms. Jinny Jogindera Sims: The minister may be willing to answer the question.

The Chair: I'd prefer that you stick to the bill, Ms. Sims, please.

Ms. Jinny Jogindera Sims: Thank you very much, Chair. I will respect your decision.

The Chair: A point of order, Ms. James.

Ms. Roxanne James: I was just going to ask if I could have my 30 seconds back.

The Chair: I don't know what's got into this committee today. I'm having a rough time.

Ms. Sims, you have the floor.

Ms. Jinny Jogindera Sims: Thank you very much.

Minister, the new law you have presented, and the one we are going to start debating here, relieves the Minister of Immigration—and I find that an interesting word—from the obligation to consider

humanitarian and compassionate considerations at the request of a foreign national.

Is this the kind of Canada we want? Why would the government want to relieve you of considering the best interests of children in possible deportation cases? Would you be open to considering amendments to protecting vulnerable children?

● (1720)

Hon. Jason Kenney: I invite you to table any amendments that you think are appropriate. I don't understand your particular concern, but if you have reasonable amendments, we always give them a good look.

Ms. Jinny Jogindera Sims: Minister, thank you. Once again, I was taken by the language in that piece of the legislation where it talks about relieving you of that responsibility.

The other question I have, and I'll try to stick to this and not to the flyers that went out, is that the minister has underlined half a dozen cases of extreme repeat non-citizen criminals who have gone on to commit serious crimes while delaying their deportation. Is removing the right to an appeal really the only way these cases could have been prevented, or did you examine other options?

Hon. Jason Kenney: Yes, we have examined other options, and I think there are probably additional reforms that are necessary. I have been talking to my colleague, the Minister of Public Safety, for example, about both operational and perhaps legislative changes that would ensure we can more quickly remove a foreign criminal towards the end of their sentence.

Before they are released from custodial sentence, we might want to look at how we can ensure we can move them through the removal process much more quickly. Part of this is an operational challenge; it's like getting travel documents from foreign governments. But just as a matter of principle, I don't think that once a foreign national has been defined as inadmissible...I generally don't think they should be back on the streets in Canada. In principle, I think we should take the paddy wagon from the prison to the airplane.

Ms. Jinny Jogindera Sims: Thank you, Minister.

Do you agree that removing the right to an appeal could in fact lead to even more judicial backlogs? It would remove any incentive for the accused to plead guilty, thus prolonging court proceedings.

Hon. Jason Kenney: No. The length of court proceedings is a challenge, obviously, for those who administer the criminal justice system. There are all sorts of reasons why people seek delays. I know many of the provincial attorneys general are dealing with that.

I want to make one correction, though. Earlier I said that the immigration lawyers were opposed to the bill. I meant to say "some" immigration lawyers. I have a number here, including one of Mr. Lamoureux's constituents, whom I think he knows—Reis Pagtakhan—who supports this bill. For example, Ravi Jain said, "It's extremely popular. The public is very much onboard with this."

I want to thank those immigration lawyers who have supported this sensible change.

Ms. Jinny Jogindera Sims: Of course, Minister, you also want to thank those lawyers who want to work with you and the opposition in trying to make this bill more effective, more fair, and all of those things, because I know those are the kinds of policies you do welcome, right?

Hon. Jason Kenney: Yes.

Ms. Jinny Jogindera Sims: Another thing that I've been dealing with, with a number of constituents in my riding, is that filling an application to immigrate to Canada can be a lengthy and challenging process. As you know, in many countries, that filling-out process is handled by people other than the applicants, because of literacy skills and because the forms are quite complicated. When you're filling out those forms, the potential for making honest mistakes is ever present. I tend to have senior moments every now and then, and I know that in one particular case—not on my immigration form, I don't want to be deported tomorrow—instead of putting 0706 under the year I was born, I managed to invert it in my head and put 0607. Those kinds of mistakes are not what I would call your pre-judged “I'm going to do this” kinds of things.

Another example I will use is names. I don't know if you're familiar with this, but in a lot of countries outside North America, many names are used for the same person. I just want to talk about one of my brothers.

The Chair: We're running out of time.

Ms. Jinny Jogindera Sims: Okay.

My question is, when you look at some of these mistakes, which can be just honest mistakes, don't you believe the five-year

inadmissibility to be an overly punitive measure for what could be a very honest mistake that you and I could make?

• (1725)

Hon. Jason Kenney: No, it's not about honest mistakes; it's about a deliberate intention to mislead.

I'll let Mr. Linklater explain.

Mr. Les Linklater (Assistant Deputy Minister, Strategic and Program Policy, Department of Citizenship and Immigration): Thank you.

Mr. Chair, I would draw attention to the wording in section 40 of IRPA, which lays out the parameters around misrepresentation. In part, it reads that misrepresentation relates to the withholding of material facts that relate to a relevant matter “that induces or could induce an error in the administration of this Act”.

Simply forgetting to tick a box or transcribing numbers or letters in a different manner than would actually be the case would not be conducive to a material fact relevant to the case.

The Chair: Thank you.

Mr. Minister, I want to thank you for coming. I hope you and your colleagues found it as interesting as we did. We appreciate it very much.

We are going to suspend for a few minutes and then go in camera to meet for just a couple of minutes.

[Proceedings continue in camera]

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