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Chair

Mr. Garry Breitkreuz

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● (1545)

[*English*]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order. It's the Standing Committee on Public Safety and National Security, meeting number 10.

We're continuing with Bill C-3, An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act.

I would like to note that we have some people here from the Department of Public Safety and Emergency Preparedness to give us advice. Welcome to Lynda Clairmont, associate assistant deputy minister, emergency management and national security; Edith Dussault, director of the operational policy section, national security policy directorate; and Warren Woods, senior policy analyst, operational policy section, national security policy directorate. From the Canada Border Services Agency we have David Dunbar, the general counsel. From the Department of Justice we have Daniel Therrien, acting assistant deputy attorney general for the citizenship, immigration and public safety portfolio.

Welcome to all of you. We will depend on you for advice from time to time throughout these proceedings, I'm sure.

Today we're going through the clause-by-clause consideration of Bill C-3, and I think without any further ado we'll go into it. We have quite a number of amendments and we've been trying to make sure they're all dealt with in the correct order, so I hope you will speak up when your amendment comes.

Mr. Ménard, before we begin, you had indicated to us here that you wanted to introduce something. You may go ahead and introduce what I believe is your first amendment. It's a bit unusual, and I don't know if anyone's mentioned to you that it's probably inadmissible because of its form.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): The first amendment reads as follows:

> That Bill C-3 be amended by replacing "défenseur" with "avocat spécial" in the French version, with such modifications as the circumstances require.

I am introducing that amendment because the issue is the title and in the title, "special advocate" is translated as "défenseur". A number of witnesses have told us that this was not a proper translation. As well, and this is my opinion, in fact, it may be misleading. There are provisions in the bill that specify that the relationship between the special advocate and the person concerned is not a solicitor-client relationship.

As the legislative drafter who drafted the amendment told us, by opting for a general provision of this type, we avoid making 37 amendments to the bill. In fact, there are 36 provisions of the bill with the term "special advocate" in English and "défenseur" in French. Counting the title, 37 occurrences. Someone has counted them. Does everyone agree on this?

● (1550)

[*English*]

The Chair: I was not clear that you were just going to do it in the title, but it could be problematic if that's....

We'll ask Joann to give a comment on this, please.

[*Translation*]

Ms. Joann Garbig (Procedural Clerk): If I understand correctly, this is to replace the word "défenseur" with "avocat spécial" everywhere the term appears in the bill.

Mr. Serge Ménard: That's right.

Ms. Joann Garbig: As I told the Chair, this is not the kind of language we see every day. Ordinarily, amendments are drafted in relation to a specific clause and the lines that are to be amended in the clause in question. I do not want to say that the committee cannot approve a change like this, but it has to be understood that someone outside the committee will have to be given the authority to make those changes.

Mr. Serge Ménard: If you were before a court as a judge and you saw that this amendment had been passed, what would you decide? Would you not understand that Parliament intended to replace the word "défenseur" with "avocat spécial" everywhere in the bill? I know that in Ottawa people always choose the most complicated way of doing things, but it seems to me that any intelligent person is going to understand that the replacement has to be made.

As well, given that we are living in a modern world, you must have a computer, and you therefore have access to the "find" function, and the "find and replace" function. Then you have to check the information you give the computer.

[*English*]

The Chair: You're really putting me on the spot, Monsieur Ménard. I think I will have to rule it inadmissible at this point because it should have pointed out each individual part. And as you said, you have a computer too, and that shouldn't have been that difficult to do. But at this point, we're now going to be asking somebody from outside this committee to do it, and I simply think that's not going to work.

[*Translation*]

Mr. Serge Ménard: That's fine, but I want to change the title. Are we going to start or end with the title?

[*English*]

The Chair: The title is the last thing we'll deal with. So I suppose if at that point you wish to bring it up again, we can. But it is going to create problems and I don't think it will change much in the next hour or two.

[*Translation*]

Mr. Serge Ménard: The method used for drafting federal legislation has always impressed me. We must end with the beginning. There we are.

[*English*]

The Chair: Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): I recognize that it would be a lot easier and very specific for us to approve the amendments if they were all drafted and every word was changed, every *défenseur* was changed to *avocat spécial*, but logically, I see nothing wrong, because if you change the word from *défenseur* to *avocat spécial*, nothing else, not even a comma, is going to have to be changed in the whole legislation.

So in a sense, you could actually tell somebody to shut their eyes and just do it, and it would be done. I think we should take the liberty at this committee to say we delegate the clerk of the committee to have that change made.

Obviously it is important to him, and the way he's explained it to us, you would agree that it's important, because *défenseur* in French has a distinct meaning and this individual *avocat spécial* in particular is no defender. He is a special advocate but he is not an absolute defender of that detainee or that person.

So in a sense, I think it's logical to do it.

● (1555)

The Chair: In a moment I will ask some of our experts here to give a comment on that.

Ms. Barnes, first.

Hon. Sue Barnes (London West, Lib.): Thank you. May we ask whether it would be permissible, the first time we come across it in the bill, to make an amendment to effect that change, then make that a consequence that would affect...so we wouldn't have to go through it 36 other times? Would that be correct procedure: if we do the first one, pass it once and then have it necessarily apply to all the other provisions?

The Chair: I'm not sure if that would be possible.

Hon. Sue Barnes: I know it's right.

The Chair: We'd need to keep very close track of that.

[*Translation*]

Mr. Serge Ménard: I will help you, Mr. Chair.

[*English*]

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: A point of order, Mr. Chair.

We had prepared a version, in case we were asked to make the change in every clause. I think we left it with Mr. MacKenzie at noon. Do you have it? It would be the Conservatives who prepared that?

[*English*]

The Chair: Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): Mr. Chair, I do believe the officials have prepared a document that would go through the bill and each clause, specifying where the change needs to be made.

There may be some breakdown in communications. I thought Mr. Ménard was going to present that as a package, but we're happy to do it.

The Chair: What about the actual change in the wording? Do any of our witnesses have any comment as to the essence of what that might do and if that would improve the bill?

Mr. Therrien.

[*Translation*]

Mr. Daniel Therrien (Acting Assistant Deputy Attorney General, Citizenship, Immigration and Public Safety Portfolio, Department of Justice): The idea of replacing "défenseur" with "avocat spécial" does not cause any difficulties. What prompted us to use the term "défenseur" to refer to the lawyer in question is that the lawyer is playing a specific role in relation to the individual against whom the certificate has been issued. Using the terms "avocat" or "avocat spécial" caused some difficulties for the legal drafter. As well, the person obviously has to be a member of the bar, and the particular aspect of the relationship between the lawyer and the individual against whom the certificate is issued is spelled out in the bill. The expression "avocat spécial", when qualified by the express provisions defining the person's role, therefore seems to us to be acceptable.

Mr. Serge Ménard: That is not what you were being asked. The question was how to proceed.

[*English*]

Hon. Sue Barnes: I want to hear from our legislative clerk on how I propose to do it, to be facilitating, whether that is available to us.

The Chair: She was suggesting that, as we go through it, we flag it in every instance.

Hon. Sue Barnes: No, that's not what I was proposing. I was saying that we do the amendment, and then once we've done it on the first occasion, it will have consequential—

The Chair: And wherever it turns up in the bill, that change is made.

Hon. Sue Barnes: Yes.

The Chair: Right, but when I read out my little script here, I will say, “Does clause 2, as amended, carry?” I will say “as amended” in each one, and you will have to assume that I am referring to and including that as well.

Ms. Bonnie Brown (Oakville, Lib.): No. We have to pass the other ones first.

Hon. Sue Barnes: Can I hear from the legislative clerk? I don't think that's right.

Ms. Joann Garbig: Perhaps it would be of assistance to the committee if each of these instances were to be flagged as we progress through the bill, so that everyone would know where the change was to be made. In that way, if I were to miss one....

● (1600)

The Chair: I think what Ms. Barnes is suggesting is that we pass the amendment and we will trust you to find all the places in the bill that—

Ms. Joann Garbig: I don't have any authority to do that.

The Chair: You don't.

You see, this is why it was suggested that this is a very highly unusual one, because it doesn't have the list of changes.

Hon. Sue Barnes: Mr. Chair, I think if we do it in the first instance in the bill, then if you want to flag it as amended, there will be consequential ones, once you've changed it once. Then we will finally get to the title, and that also will be a consequential amendment and it will get changed there too.

The Chair: Are you all ready to vote on that? Are there any more comments on it?

There is one instance in clause 1, in lines 11 and 12 of the French text, so that change would have to be made there.

Mr. Dave MacKenzie: So moved.

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

The Chair: Any further discussion on clause 1?

Hon. Sue Barnes: It's not on line 11 in the English.

The Chair: No, in the French. I said in the French.

Ms. Bonnie Brown: Oh, here it is.

Hon. Sue Barnes: I think the line isn't 11, though. It's line 13 for the French version.

The Chair: Okay, sorry.

Is there any more discussion on clause 1? We've passed the amendment.

[*Translation*]

Mr. Serge Ménard: The purpose of the amendment is to amend the bill by replacing the word “défenseur“ with the words "avocat spécial".

[*English*]

(Clause 1 as amended agreed to)

(Clauses 2 and 3 agreed to)

(On clause 4)

The Chair: Now we have some amendments that have been submitted for clause 4. BQ-2 is on the second page of your package. Not all the amendments are in the package, but this one is in the package.

Monsieur Ménard, would you like to propose your amendment, and then we'll open it up for discussion.

[*Translation*]

Mr. Serge Ménard: I move that Bill C-3, in Clause 4, be amended by replacing lines 32 to 34 with the following:

> 78. If the judge is not satisfied beyond a reasonable doubt that the person who is named in the certificate is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, the judge shall quash the certificate.

● (1605)

[*English*]

The Chair: Okay, is there any debate on this?

Mr. Dave MacKenzie: Mr. Chair, I'd like to hear from the officials what that does with respect to the bill.

The Chair: Okay, who would like to comment to begin?

Mr. Dunbar.

Mr. David Dunbar (General Counsel, Canada Border Services Agency): As I understand the amendment, it would move the standard of proof for a finding of reasonableness in the certificate from the current standard to that of beyond a reasonable doubt in the criminal law. Is that correct? That would be a very significant shift in the law and one that would run against a great deal of established jurisprudence, and frankly, it would be unprecedented in an administrative law proceeding such as this.

I can direct you to a great deal of case law and law from commentators. For example, Mr. Waldman, whom you heard from earlier as a witness, in his text, *Immigration Law and Practice, 2nd ed.*, states that for the finding of inadmissibility on security grounds, the standard of proof to be applied is the less-than-civil standard, i.e. reasonable grounds to believe.

For proving inadmissibility on a removal order, I can give you some language from the Supreme Court of Canada in its recent decision in Mugesera, in which the court, first of all, affirmed the court of appeal standard that the

> “reasonable grounds to believe” standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities.

They confirmed that as the standard. Then they went on to say that imposing the standard in the Immigration Act—and they were referring to the old Immigration Act, paragraph 19(1)(j) in the previous act—in respect of war crimes and crimes against humanity.... This is the particular inadmissibility section in question:

> ...Parliament has made clear that these most serious crimes deserve extraordinary condemnation. As a result, no person will be admissible to Canada if there are reasonable grounds to believe that he or she has committed a crime against humanity, even if the crime is not made out on a higher standard of proof.

I raise these points of law to confirm, first, what the standard is, what the court and commentators on the law tell you the standard is currently, and second, that the Supreme Court has confirmed this, and this is the rationale they have given for it.

The motion at hand would, as I said before, be an extremely significant change and one, to be honest, that I couldn't personally recommend.

The Chair: Thank you.

Ms. Priddy, do you have a comment?

Ms. Penny Priddy (Surrey North, NDP): While I am familiar with what you are quoting from, a number of the witnesses who appeared before us made that very point quite clearly. They felt that since we did go to the trouble and time of hearing from them, they felt that the standard to which they were being held would be clarified by this.

I think Mr. Ménard's amendment is supported by many of the witnesses we heard from.

Thank you.

The Chair: Okay. You've heard the comments from Mr. Dunbar and Ms. Priddy. Is there anybody else?

We'll go to Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: I am well aware that I am proposing a radical change to the law as it applies at present. I am doing this precisely because of the consequences of the decision that is made by the judge.

I believe that the decision of the Supreme Court holding the law to be unconstitutional, unless serious corrections are made to it, is based precisely on the extraordinary consequences of the decision the judge is making here. Reread that decision; I have.

First, there is only one kind of punishment in Canada. There can be loss of privileges or fines, but essentially, the only punishment there is, is imprisonment. As well, the decision the judge is making here can mean imprisonment for an indeterminate period. It is precisely because that consequence is very serious and because it is having to be made based on unusual evidence that would not be applied that the judges are asking for a judicial process to be followed and for section 7 of the Constitution to be applied.

The Court has conceded that the decision can be based on evidence presented, on reports by witnesses who are not cross-examined, on evidence that the person concerned is not entirely aware of, and so on. Because of all that, changes have to be made.

However, at the end of the line, it can be said that in Canada people are not imprisoned without someone being satisfied that they were guilty beyond a reasonable doubt. The only people who are, in fact, are people who have not been granted bail. But the point is that those people are imprisoned for a limited time, and the law does provide measures so that people who have not been granted bail can be tried more speedily, so that a decision beyond a reasonable doubt can be made.

I think that, quite the contrary, what I am proposing here is not a radical change in terms of the use of prison as punishment. I think I have shown, in the course of the committee's proceedings, that I was perfectly aware of the risks involved in fighting terrorism and the measures that have to be taken. Those measures have to fit the way things are, like using reports and information that has to be kept secret for various reasons: because it endangers the lives of other people who are undercover agents working to protect us, because it discloses methods we use to fight terrorism, or because we have to get it from our allies who require that we keep it confidential, and so on.

We are already making a lot of concessions, but now we have come to the most serious decision there is: incarceration for an indeterminate period. Who is ever incarcerated for an indeterminate period in Canada?

Some people are sentenced to imprisonment for life. There again, that does not mean incarceration until death, because there are reviews. There are also dangerous offenders. Dangerous offenders have committed very serious offences and have been found guilty beyond a reasonable doubt.

● (1610)

The decision to opt for the most severe punishment, in my opinion, has to be made on the basis of certainty. I think that it is even more important than the creation of the role of special advocate and the fact that the special advocate is being given access to secret information.

In a case where a person is left at large, we have to be aware that while there are serious but secret reasons to believe that the person is a danger to the security of Canada, there is a chance that the person is involved in organized crime, but no certainty on that question can be reached and charges laid. What do we do in such cases? How does society defend itself against people whom the police know to be directing organized crime, to have drug trafficking rings and, even more seriously, an internal police system?

When I was the Minister of Public Security of Quebec, I vigorously prosecuted members of organized crime. Those people were capable of deciding, around a table, who would be killed, and by whom. What did we do in such cases to protect society? We kept them under surveillance. We never stopped our surveillance.

Nevertheless, I am a realist. When a security certificate is issued against someone, supposedly because they are thought to be a sleeper cell, I am satisfied that in the vast majority of cases you have interrupted any prosecution, any conspiracy against security. The person is burned, most of the time, but if they are not completely burned, they have to be kept under surveillance, and it is not impossible to do that. I am satisfied, given the money being spent at present to detain these people for long periods of time, that the cost of surveillance is about the same as the procedures we are using.

We are one of the most civilized countries on the planet and we want to continue to be seen that way. That is why we have constructed a complicated system to deal with cases when we are informed that a person presents a danger in terms of terrorism, a danger that we are entitled to defend ourselves against. As I often say, in many other countries arbitrary decisions are made by ministers based on secret information. We have opted for a judicial process. It seems to me that we have to take that process all the way. The harsher the sentence, the more complicated the procedure and the more precautions we have to take.

The government argues as if the issue were not incarceration, but deportation. We are well aware that people who resist deportation do so, in most cases, because they fear death or torture or they are afraid they will disappear. As I have often said, that prison has three walls, and in some cases the fourth wall is a precipice. When this is the issue, we have to protect people. The reasoning of the Supreme Court in Charkaoui, for example, is that in cases where the consequences of the decision are so serious, we have to do the impossible to ensure that the procedure is as close as possible to a criminal proceeding. In my view, we have to take that reasoning to its logical conclusion, and because the consequence can be as serious as indefinite incarceration, we have to demand satisfaction to the highest level, the same as we required when we used to hang people and as we still require in the case of people sentenced to life.

● (1615)

I note that the dangerous offenders who are given indeterminate sentences have been found guilty beyond a reasonable doubt at least three times.

That is why the criterion for the judge to make a decision with such serious consequences for the person concerned has to be satisfaction to a certainty.

[*English*]

The Chair: Mr. Cullen, please.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chairman.

I understand what Mr. Ménard is trying to accomplish here, I think. With respect, I am concerned that first of all we need to understand that this is not necessarily putting someone in jail. This is determining whether or not a person is inadmissible to Canada on the grounds of security and violating human rights or whatever.

The next step would be that if they are a threat to the public security of Canada, they would be detained, but the person is always able to leave. We know, as a practical matter, in some cases that can be difficult. I'm not a lawyer, but this message might be confusing. We know that in this process—and we're working to try to improve the process—the burden of proof is not the same as it would be in a criminal court of law, by virtue of the very process. It's not that type of evidence, and so if a judge had to review the matters before him or her and use that same criterion, this could grind to a halt very quickly, it seems to me. It would be a confusing signal, and I don't think it would be the appropriate signal.

I don't personally think it is something we should support.

● (1620)

The Chair: Next on my list is Ms. Brown.

Ms. Bonnie Brown: Thank you very much.

I was interested in the comments of Mr. Dunbar. He made his points very well.

I'm going to ask him if there is any other administrative law in which the subject of that law could end up in jail for as long as seven years, perhaps in solitary confinement or isolation or even under house arrest of an indeterminate length.

Mr. David Dunbar: There are certainly many administrative law schemes that are supported by criminal law sanctions, but that's different from what you're asking me.

Ms. Bonnie Brown: Could you give me an example of even one of those?

Mr. David Dunbar: If you absolutely refuse to file your taxes, eventually there is a criminal offence attached to that.

Ms. Bonnie Brown: Would you not have to go through the criminal court?

Mr. David Dunbar: Exactly, which is why I'm saying it's a different matter. There are also offences attached to the Immigration Act, but on preventive detention, or detention for the purpose of dealing with public danger.... Let me be specific in my language here. I'm having difficulty on the spot thinking of something.

I would propose to come back, or if I can think of something in the interim, I will answer your question. At the moment I'm finding I'm somewhat on the spot and unable to think of something.

Ms. Bonnie Brown: I propose that the difficulty we're having, Mr. Chair and Mr. Ménard, is the fact that we have an administrative law that ends up with criminal law sanctions without the criminal law process, and this is something that has been developed in the face of a modern phenomenon. I know the Supreme Court has ruled that these certificates are valid, etc.; however, I think the challenge to legislators is not the same challenge as to the Supreme Court.

A few years ago we passed this law, and it was up to the court to interpret what we meant. I was here when we passed this law, and at the time I wasn't 100% sure that this was such a good thing or that it was very carefully thought through and that every clause of it synthesized perfectly with every other clause. In sitting through these hearings, I'm seeing that this is the main problem. We have an administrative law that ends up with criminal law sanctions without the person involved going through the criminal law process.

We have a chance to improve it here, and Mr. Ménard, in all his experience, is making a suggestion. It seems to me that the challenge for legislators is to be creative about how they build laws. They revise them, they amend them, they reform them over time, and they try to make them better. It seems to me that we have in front of us what was essentially a hybrid between two completely different kinds of law and that Mr. Ménard is coming up with a solution to cause some synthesis to be built in. I thank him for the thinking he has done and the explanation he has made, and I will be supporting his amendment.

Thank you, Mr. Chair.

● (1625)

The Chair: Mr. Therrien, you indicated you have a comment as well.

Mr. Daniel Therrien: I would like to make a few points.

First, there's no question that we're dealing with a very special administrative process with grave consequences for individuals. That cannot be denied. That said, we are dealing with a removals process, and in that process to remove on the basis of the civil standard, as opposed to the criminal standard, is a practice that has been recognized by the Supreme Court in earlier cases. That does not prevent you as parliamentarians, of course, from making a different choice. I just want to reiterate that the Supreme Court has found the current standard to be constitutionally valid.

Another point I'd like to make is that I know of no other country that deals with the issue you're confronted with by raising the burden of proof to a criminal law standard of proof. We have other countries—the U.S., the U.K., and others—that are dealing with similar issues, and in none of these countries was the solution to raise the burden of proof to the criminal standard. They're all using both the criminal process, based on the criminal law standard of proof beyond reasonable doubt, and the removals process on the lower standard. So if Canadian legislation were to be amended, I think Canada would be alone in that camp.

[*Translation*]

Mr. Ménard talked about the government's position that the issue is removal, not detention. Clearly the consequence is lengthy detention in some cases where the individuals concerned make allegations of torture.

I would like to make a final point, that in the Charkaoui case, the Court recognized the importance of the consequences for the individual and ruled that the procedure had to be amended. This is what led to the recommendation of having a special advocate.

The Court also ruled on the rules that apply to detention. On that point, the Court said that because detention reviews are held on a regular and frequent basis, it is constitutionally acceptable to detain a person for a long period while awaiting removal, based essentially on the criteria in the Immigration and Refugee Protection Act.

What concerns Mr. Ménard, and perhaps other members of the committee, is the criteria that apply to detention. The Supreme Court essentially found the current system to be constitutional, subject to the distinction that was formerly made between foreign citizens and permanent residents, and the frequency of reviews. But on the substance, on the question of the criteria that apply to detention, the Supreme Court found nothing to restate.

[*English*]

The Chair: Thank you.

Are there any further comments?

Okay, if there's going to be more discussion, I first of all have an administrative detail that I have to take care of here. I would prefer to do this in camera, but it takes too long. We're going to suspend for the votes, and then we're going to come back here. I'd like to know if you'd rather have pizza or something else from the Parliamentary Restaurant.

Ms. Bonnie Brown: We're not coming back here after the votes. It could be 30—

The Chair: I'll just make it clear. We're suspending for the votes, and then we're going to reconvene the meeting to finish this. It doesn't look at this point as though we're going to finish. That's why I'm asking you what would you prefer to have—something from the Parliamentary Restaurant or pizza? We have to order from the Parliamentary Restaurant in the next two or three minutes.

Ms. Bonnie Brown: On a point of order, Mr. Chair, this meeting is called from 3:30 to 5:30. I'm told the votes could go as late as eight o'clock tonight. You can't arbitrarily suggest that we have to come back here at eight o'clock on a Thursday night when all of us have flights booked, and with no notice ahead of time. It is not the role of the chair to arbitrarily lay down that this is what's going to happen without consultation with the rest of the committee.

● (1630)

The Chair: Well, the committee decided they were going to get through this today, and it appears that's not going to be the case.

Ms. Bonnie Brown: We decided we would begin clause-by-clause consideration at this meeting.

The Chair: Go ahead, Mr. Dosanjh.

Hon. Ujjal Dosanjh: I understand that we need to finish this. We need to find the best way of accomplishing that, and many of us have many other commitments tonight and tomorrow. In fact, I wasn't planning to come back Monday, but if we want to finish it and we want to do it starting Monday morning, even at eight o'clock, and go through nine o'clock—

Hon. Sue Barnes: No.

The Chair: Yes, nine o'clock—

Hon. Ujjal Dosanjh: That's all right. If we don't want to do that, then we'll have problems. We need to find alternative times that are acceptable to all of us, and if some of us can't make it, then maybe we can have substitute members. I don't know any other way. I mean, we've got to deal with it.

The Chair: Right. I agree.

Mr. Cullen, did you have a comment?

Hon. Ujjal Dosanjh: Maybe we can go at the end of the meeting, before we go to the votes. Maybe we can just huddle and find some time to do that, rather than going at each other in this fashion.

The Chair: Okay.

Mr. Brown is next, and then Mr. Cullen.

Mr. Gord Brown (Leeds—Grenville, CPC): Mr. Chairman, I agree, but why don't we get moving here? We should continue instead of arguing about this, and then at about 5:10 we'll decide.

The Chair: We have two minutes to order; if we don't order in two minutes....

Go ahead, Mr. Cullen.

Hon. Roy Cullen: I agree. Let's carry on. It may well be that all the other amendments—I mean, this one is contentious, let's face it. Maybe if we can deal with this one, we'd find it would flow better.

The Chair: It just appeared that there was a problem developing, and if we let it go, it'll get worse.

We'll go to the vote.

(Amendment negatived)

The Chair: That was five to three.

[*Translation*]

Mr. Serge Ménard: Can the vote be by roll call?

[*English*]

The Chair: You should really have called for it before we did it. Does the committee want to go back for a second?

Okay, the committee doesn't want to go back. We'll continue here.

Next we have amendment BQ-3, and I will tell you right off the bat that it is inadmissible, so that one is easy to take care of.

Did everybody hear my ruling? Amendment BQ-3 is inadmissible because it does not—

[*Translation*]

Mr. Serge Ménard: A point of order, Mr. Chair.

We counted four votes in favour, and you said there were three. There was Penny, Ms. Brown, Ève-Mary and myself. Ms. Thi Lac is listening to the interpretation, and there is always a delay.

[*English*]

The Chair: Ms. Thi, did you raise your hand? Did she raise her hand? Okay. The clerk has corrected me; it's four. Maybe it takes some time for the translation to come through, so people didn't raise their hands in time. That's fine. It'll be four in favour, five opposed.

Do you still wish to propose amendment BQ-3, Monsieur Ménard?

Hon. Sue Barnes: Is it out of order? If it's inadmissible, he doesn't propose it.

The Chair: He can propose it, and then I'll rule it out of order. If he wishes to propose it and take time, then I'll rule it out of order. That's fine, but he has the right to propose it.

[*Translation*]

Mr. Serge Ménard: I have already sent my motion to amend clause 4. I will take less time.

Take a breath. I know you are all intelligent and you can apply the arguments I have already made, but this is a different problem. The amendment is longer, so I will make the argument...

I move that Bill C-3, in Clause 4, be amended by replacing lines 35 to 41 on page 3...

● (1635)

[*English*]

The Chair: Let me interrupt you. It will be part of the record; you don't actually have to go through the length of the whole thing if you don't wish to.

[*Translation*]

Mr. Serge Ménard: Everyone has read the amendment, I imagine.

Essentially, the purpose of this amendment is to provide an ability, before the Federal Court of Appeal, that is similar to what any criminal accused has, and not only on a question of law, as is proposed. What is proposed is a question of law that is stated by the person whose decision is the subject of an appeal.

We have a good enough relationship that I do not have to repeat the essential points in the arguments I have already made, but which are *[Editor's Note: Inaudible]*. In my opinion, we must have just as many guarantees, because of the consequences that attach to the decision that is made.

I do have an additional argument, however. I find it extremely difficult, myself, to accept the possibility that a person could be sentenced to an indefinite term based on the opinion of a single person. There should be a broader appeal.

As well, this is the person who made the decision that it is sought to appeal. I do not believe that this will inspire great confidence in the person concerned. I remember that there could be appeals from summary convictions when I was...

[*English*]

Mr. Dave MacKenzie: I have a point of order.

The Chair: Just let me interrupt for a minute.

Mr. Dave MacKenzie: I think I understand what Mr. Ménard is saying here, but this is outside the scope of where we are, and I'm not sure it makes sense that he continues to discuss the amendment.

The Chair: I already indicated that it will be ruled out of order, but being the chair that I am, I allow for discussion, and I don't want to shut it off. I'm juggling the fact that we have to get done.

Mr. Dave MacKenzie: If it's out of order, why carry on?

Ms. Bonnie Brown: On a point of order, the chair does have the right to rule something out of order, explain to the mover, and then the mover doesn't discuss the amendment. I too am curious as to why you are ruling it out of order.

The Chair: Because it goes beyond the scope of the bill, according to Marleau and Montpetit.

Ms. Bonnie Brown: In which way?

The Chair: If you go back and read Marleau and Montpetit—and I don't have it in front of me—on page 654, it goes way beyond what the scope of the bill has intended. I can ask some of our legal experts—

Ms. Bonnie Brown: I've been a chair, Mr. Chairman, and I usually explain to the mover how the amendment goes beyond the scope of the bill.

My understanding of the bill is that this government introduced the notion of appeal, for which I am very grateful, and Mr. Ménard has expanded with a little detail about how that appeal would work. But appeal, the subject of this amendment, is in the bill. How is this beyond the scope?

The Chair: Ms. Brown has asked for a legal opinion. Would anybody like to give a comment on this?

Hon. Sue Barnes: No, the legal opinion is from your legislative clerk, not the officials.

Ms. Bonnie Brown: Yes.

Hon. Sue Barnes: This is committee business.

The Chair: To go beyond the scope of the bill, okay.

Ms. Bonnie Brown: No, it's the legislative clerk who made that decision, so she should tell us why.

Ms. Joann Garbig: This is in the nature of advice offered to the chair. Our rules and practices provide that an amendment is not procedurally admissible if it goes beyond the scope of the bill as it was adopted by the House at second reading.

The bill provides in proposed section 79 an appeal "only if the judge certifies that a serious question of general importance is involved". The amendment proposes a right of appeal, firstly, on any ground of appeal that involves a question of law, on any ground of appeal that involves a question of fact or a question of mixed law, on any ground of appeal not mentioned above or that appears to be sufficient grounds. And then we return to the original terms of the bill.

In my view, this went beyond the scope of the bill as it was adopted by the House at second reading, and this is why I offered that advice to the chair.

● (1640)

Ms. Bonnie Brown: Thank you, Mr. Chair. That's very helpful.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I challenge that decision, with respect, because I believe the opposite to be true. Section 79 provides for a right of appeal in certain circumstances.

[*English*]

Hon. Sue Barnes: On a point of order—

[*Translation*]

Mr. Serge Ménard: You will tell me that the way...

[*English*]

The Chair: Ms. Barnes, on a point of order.

Hon. Sue Barnes: Mr. Chair, as I understand it, you have ruled that something is out of order. That's non-debatable. The only thing you can do is challenge the chair. If my colleague wishes to challenge the chair we get rid of that, but we do not have a debate after you've ruled, unless it's a challenge.

The Chair: I think that's what you're doing, are you, Mr. Ménard?

[*Translation*]

Mr. Serge Ménard: Certainly, I am challenging that decision. Can I not explain why?

I don't understand why she could explain her position and I am not give the right to do the same thing.

[*English*]

Mr. Dave MacKenzie: Let's take a vote on that.

[*Translation*]

Mr. Serge Ménard: I don't understand.

[*English*]

The Chair: Okay, you're challenging the chair, so I think the next thing we do—

[*Translation*]

Mr. Serge Ménard: Why could she give her opinion if it is not debatable, Mr. Chair?

[*English*]

The Chair: One of the members of the committee asked for an explanation, sir. The next thing we can do is go to a vote on this.

[*Translation*]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): This is getting ridiculous. If a member of the committee could ask for an explanation, then I am going to ask Mr. Ménard for one.

[*English*]

The Chair: Are you challenging?

Hon. Sue Barnes: On a point of order, Mr. Chair, the only thing we can do at this point in time, after you've ruled, is challenge the chair. If the member wants to challenge the chair we'll vote on it, but it's not debatable. That's not because I'd like it to be, it's just that those are the rules of this committee and the House.

[*Translation*]

Mr. Serge Ménard: So why could she give her reasons?

[*English*]

The Chair: Will you make it clear whether that is a challenge?

[*Translation*]

Mr. Serge Ménard: Yes.

[*English*]

The Chair: Okay, then we'll take a vote. The question is that the ruling of the chair be sustained.

(Ruling of the chair sustained)

The Chair: We're going to amendment G-2.

Hon. Sue Barnes: I don't have a copy of G-2. I have LIB-1.

The Chair: Actually, we're going through the bill as the amendments apply, so—

Ms. Bonnie Brown: It should have been inside this.

The Clerk of the Committee (Mr. Roger Préfontaine): Yes, this is a government package that should have been given to you.

Can I speak, sir?

The Chair: Yes, go ahead.

The Clerk: For members' information, the government amendments were brought only at the meeting, that's why they're not within the package.

Hon. Sue Barnes: Yes, but we still need to have it.

Ms. Bonnie Brown: On a point of order, Mr. Chairman—

The Chair: On a point of order, Ms. Brown.

Ms. Bonnie Brown: —Mr. Dosanjh's amendment, which is LIB-1, applies in line 23 on page 7. The government amendment applies after line 27. So I believe LIB-1 comes earlier in the bill than G-1, so you would be compelled to do LIB-1 before G-1.

The Chair: The numbering might be a little bit off, but we're on page 6, line 21.

Ms. Bonnie Brown: The government package is out of order then, because you're in the second amendment of the government's package.

The Chair: Yes, the numbering may not be.... Listen to what I'm saying: G-2.

Have you all located it yet?

Ms. Bonnie Brown: It's not even marked on here what's 1 or what's 2.

Hon. Sue Barnes: We have no idea what these are.

Ms. Bonnie Brown: These are not marked. You see, that page doesn't have a G on it, no less a 1 or a 2. It's incompetent.

The Chair: Okay. If you have G-2—

[*Translation*]

Mr. Serge Ménard: I'm sorry, but if we proceed line by line...

[*English*]

The Chair: It says that Bill C-3 in clause 4 be amended replacing line 21 on page 6.

[*Translation*]

Mr. Serge Ménard: We have skipped over the amendment at line 10 on page 7.

Mrs. Ève-Mary Thaï Thi Lac: Excuse me, Mr. Chair...

Mr. Serge Ménard: Are we following the lines in order, or not?

● (1645)

[*English*]

The Chair: Lines 6 to 8 on page 7.

Hon. Ujjal Dosanjh: Three different pages make up that amendment. This is about special advocates.

Ms. Bonnie Brown: Which one comes first?

Hon. Ujjal Dosanjh: We have three separate amendments, perhaps. Yes, it is three separate amendments. Okay.

Hon. Sue Barnes: Mr. Chair, can we clarify? Is G-1 the second page of the handout that was just handed to us? It says: "That Bill C-3, in Clause 4, be amended by (a) replacing line 21 on page 6 with the following: special advocate in the proceeding...".

The Chair: That's G-2, not G-1. You said G-1.

Yes, G-2 comes before G-1.

Ms. Bonnie Brown: Why don't you just call it G-1?

Hon. Sue Barnes: Which one is G-1?

Hon. Ujjal Dosanjh: Let's deal with G-2. Let's deal with it.

Hon. Sue Barnes: Let's deal with G-2.

An hon. member: They're not in order.

[*Translation*]

Mr. Serge Ménard: Mr. Chair, with all due respect, we have an amendment at line 10 on page 7. So I don't see why we are going to line 27.

An hon. member: We are on page 6.

Mrs. Ève-Mary Thaï Thi Lac: No, it says page 7, line 23; and we have page 7, line 10.

[*English*]

The Chair: The French pages are different, but this one starts on page 6.

Mr. Serge Ménard: Which one is on page 6?

Mr. Dave MacKenzie: The one on page 6.

Ms. Bonnie Brown: That's the one.

The Chair: Yes, I don't have it in front of me—

An hon. member: It's the second one in here.

The Chair: —and we only have one copy here between the two of us.

Mr. Dave MacKenzie: You took a motion from Mr. Dosanjh.

Hon. Sue Barnes: Yes, this is "special advocate".

An hon. member: That's what we need.

Hon. Ujjal Dosanjh: May I just propose the amendment?

An hon. member: Let's clarify this.

[*Translation*]

Mr. Serge Ménard: No, that's fine. Yes.

[*English*]

The Chair: Yes, go ahead, Mr. Dosanjh.

Hon. Ujjal Dosanjh: This is the reworking of a proposal we had authored by the House counsel, and it's been reworked by the government. We should deal with it. I'm happy it can be dealt with now, and if there are some deficiencies we'll come to that. I'd like to change some things, but let's deal with this. I'm happy to proceed with this.

The Chair: All right.

Hon. Sue Barnes: Is this a Liberal amendment or a government amendment?

The Chair: We work together on this committee. Let's not get too hung up on who is doing what. Part of the reason is all the working together people have done.

Hon. Sue Barnes: Okay, let's start it.

The Chair: It may look as if it's confusing, but somebody knows what's going on here.

Okay. Are you ready to introduce the amendment?

Hon. Ujjal Dosanjh: Can I speak to it?

The Chair: Actually, it should be introduced, first of all.

He's saying he's going to defer to you, so go ahead.

Hon. Ujjal Dosanjh: Thank you.

The three pages have three different amendments, but they all work together. They're amending the provisions with respect to the special advocate. Under this, as I understand it, after hearing presentations from the permanent resident or the foreign national and the minister, and after giving particular consideration and weight to the preferences of the permanent resident or foreign national—obviously there will be an opportunity to be heard—the judge appoints the special advocate, if there seem to be no problems, such as those enumerated on the second page of this amendment.

I'm satisfied with that, because sometimes some individuals could refuse to appoint any one of the 20 special advocates who might be on the list, or might want to change every other day, or there might be conflicts and other problems, and the judges need that discretion. This clearly says that it's the preference of the detainee that has to be kept in mind while appointing. I think that's an important principle.

The problem I have is with the third page. We've heard presentations here from Mr. Waldman, Mr. Forcese, and others that we should have....

Sometimes there are unorthodox ways of working here.

● (1650)

The Chair: You never know how legislation is made. It's worse than watching wieners being made.

Some hon. members: Oh, oh!

Hon. Ujjal Dosanjh: I would like to make that “that the Minister of Justice shall ensure that special advocates are adequately supported and resourced” rather than the current clause.

I have the French translation of that available as well. I can make that available to you.

The Chair: In essence, you are proposing a subamendment.

Hon. Ujjal Dosanjh: I am, but obviously I'm proposing an amendment.

The Chair: We should have had you move the amendment, and then he would have had the discussion.

But you have moved this amendment, have you, Mr. MacKenzie?

Mr. Dave MacKenzie: Yes.

The Chair: You had some discussion.

Mr. Dave MacKenzie: I would like to ask the officials how that changes the original document, if instead of just leaving it as provided with adequate “administrative support”, it is changed to say adequate “resources and administrative support”.

The Chair: Have you had time to look at this? Are you prepared to comment?

Mr. Dunbar, your microphone is on.

Mr. David Dunbar: First of all, I'm sorting out which particularities we're talking about. We're going to talk first of all about “ensure that special advocates are provided with adequate administrative support and resources”.

The comment I would make simply is that it was the intention to do exactly this without the legislative authority, to provide adequate resources. It's not necessary just to say such in legislation, but we are in the hands of the committee if—

Hon. Sue Barnes: We want to. Yes, let's just do it, and then let's go.

[*Translation*]

Mr. Serge Ménard: Mr. Chair, I have a subamendment. I am sure that there will be agreement.

[*English*]

The Chair: Just a minute. G-2 is before the committee.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I believe that Mr. Dosanjh supports the subamendment. In his proposed amendment, he refers to the "défenseur". So the word "défenseur" would have to be replaced by "avocat spécial".

That is the subamendment I am proposing.

[*English*]

Hon. Ujjal Dosanjh: Agreed.

[*Translation*]

Mr. Serge Ménard: We went a little too fast. You are starting at line 21, but the word "défenseur" also appears in line 20.

If I can get unanimous agreement, we could maybe amend line 20, because the amendments have to be submitted one by one.

[*English*]

The Chair: Yes, point made. We will note that always. The vote at the beginning...it was understood that that will be made every time.

Mr. Dave MacKenzie: We've already moved the amendments.

The Chair: You've moved the amendment.

One amendment, that's G-2.

● (1655)

Mr. Dave MacKenzie: Is that what we need? Okay. Can we vote on it?

Ms. Bonnie Brown: We need to vote on the subamendment.

The Chair: There's no more discussion.

Oh, Ms. Priddy.

Ms. Penny Priddy: I did miss part of the conversation; for that, I apologize. How did people describe “adequate”, or did you have a whole conversation about this and if I had listened I'd know?

Hon. Ujjal Dosanjh: Mr. Chair, may I respond to my colleague?

I think it would be too difficult and inappropriate to be more prescriptive than simply saying “adequate”. I don't think we should be going into thousands of millions.

Ms. Penny Priddy: I didn't, either. It's that I'm always leery of the word “adequate”: it sometimes fails to be so.

The Chair: Are we ready to vote? No, I see we're not ready to vote.

Ms. Barnes.

Hon. Sue Barnes: Mr. Chair, we're voting on the subamendment of adding “and resources”, though, is that right?

Mr. Dave MacKenzie: I think we're going back to the first one, aren't we?

Hon. Sue Barnes: You have to do the subamendment before you can do the whole thing.

Mr. Dave MacKenzie: No, I think we've moved past where we should have been.

Ms. Bonnie Brown: Oh, I see, he wants to do it page by page.

The Chair: Mr. Dosanjh made general comments on several things, but we're now coming back to vote on G-2. I hope you have that before you. This is the whole amendment here, right?

Mr. Dave MacKenzie: This is line 21 on page 6, right?

The Chair: Yes. Should I read it so you all know what you're voting on?

Ms. Bonnie Brown: Call the question.

The Chair: Okay, to the question:

> That Bill C-3, in Clause 4, be amended by
>
> (a) replacing line 21 on page 6 with the following:
>
> special advocate in the proceedings after hearing representations from the permanent resident or foreign national and the Minister and after giving particular consideration and weight to the preferences of the permanent resident or foreign national;
>
> (b) replacing lines 6 to 8 on page 7 with the following:
>
> with an opportunity to be heard;

(Amendment agreed to)

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: Let's go back and proceed in order, because you are covering three pages, and we have an amendment to propose in the middle of those three pages.

[*English*]

Hon. Sue Barnes: Okay, I understand.

The Chair: BQ-4 is next.

Monsieur Ménard, you may introduce BQ-4.

BQ-4 was in your original package, that Bill C-3 in clause 4 be amended by replacing line 10. Do you have that one?

Hon. Sue Barnes: We're going to do ours first.

Ms. Bonnie Brown: No, we can have both, because his is line 10 and it's not the definition.

The Chair: Page 7, line 10: “anything—other than a statement obtained under torture”, and so on.

Mr. MacKenzie, did you have a comment?

You have to table your amendment, Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: Mr. Chair, I move that Bill C-3, in Clause 4, be amended by replacing line 10 on page 7 with the following:

> anything—other than a statement obtained under torture—that, in the judge's opinion, is

[*English*]

The Chair: Is there any discussion?

Mr. MacKenzie.

Mr. Dave MacKenzie: Mr. Chair, I would prefer that it be amended under that same section, after line 27 on page 7, by saying, in proposed subsection 83(3):

> For greater certainty, a statement obtained by means of torture is not reliable.

● (1700)

Hon. Sue Barnes: We can do both.

Ms. Bonnie Brown: There are three different places—

The Chair: We can take a vote on this. If you don't agree with it, we'll just—

Mr. Dave MacKenzie: Another thing I would ask is that you ask the officials at the table with respect to—

The Chair: Amendment BQ-4? Okay. Mr. MacKenzie has asked for a comment, Mr. Therrien.

[*Translation*]

Mr. Daniel Therrien: The two versions obviously refer to the same thing. What we understand from the amendment proposed by Mr. Ménard is that the text would essentially say that the judge rely, in deciding whether the certificate is reasonable, on reliable evidence, with the exception of evidence obtained under torture.

That suggests that information obtained under torture can be otherwise reliable. In our view, a statement obtained under torture is not reliable. The proposal made by Mr. MacKenzie achieves essentially the same goal by specifying that unreliable information includes statements obtained under torture.

[*English*]

The Chair: Thank you.

It has been pointed out to me that there are three amendments that will deal with this issue: the one that is before us, amendment BQ-4; but also one from the Liberals, your first one; and one from the government, amendment G-1. I guess the committee has to decide what they feel is the best.

Ms. Brown.

Ms. Bonnie Brown: As I read them, Mr. Chair, l don't think they're mutually exclusive. It suggests in three different spots our aversion to anything obtained under torture, and I don't think there's anything wrong with that bit of repetition to show the emphasis that we want to place on that concept in the bill.

So I think you should take them one at a time. If all three pass, fine; they don't contradict each other in any way.

The Chair: Not being a lawyer, I think I'll get a comment.

Mr. Therrien.

Mr. Daniel Therrien: I think they do contradict each other in that Mr. Ménard's motion essentially says that information obtained by torture would otherwise be reliable. So you cannot have—

Ms. Bonnie Brown: Would be reliable?

Mr. Daniel Therrien: Essentially the judge, in determining the reasonableness of the certificate, has to look at reliable information, to the exclusion of what is obtained by torture, which assumes that, as a rule, information obtained by torture is reliable—which is, with respect, incorrect.

[*Translation*]

Mr. Serge Ménard: I understand Mr. Therrien's opinion perfectly. I understand his reasoning, but that is not what I am saying.

I am saying that if a judge believed that a statement obtained under torture was credible and useful, even that judge should reject it. I hope, as he does, that all judges are going to find that a statement obtained under torture is not credible, but some day, a judge might find that, in the circumstances, a statement obtained under torture was credible. The amendment I am proposing would prevent that statement from being relied on in that case.

I think this is a nuance...

[*English*]

The Chair: Maybe some of your concerns, Monsieur Ménard, would be alleviated if you turned to a later amendment, amendment G-1.

Hon. Sue Barnes: Try the Liberal amendment.

The Chair: Yes. The Liberal one is much longer. There's LIB-1 and G-1.

I know everybody's in a hurry, but I think we've got to get it right. I'm sorry.

Ms. Priddy, do you have a comment?

● (1705)

Ms. Penny Priddy: I have a question for clarification, if I might.

The Chair: Go ahead.

Ms. Penny Priddy: You probably had this discussion when you looked at the Anti-terrorism Act and other things. Under the definition of torture, if I say that if you do not cooperate with me and sign something or say something or participate with me, I will assassinate your family, is that torture?

The Chair: Mr. Cullen.

Hon. Roy Cullen: No, I wasn't going to be answering the question. I had another intervention.

Ms. Penny Priddy: It's for the officials. The answer comes from the officials.

The Chair: She's asking for a definition of torture.

Ms. Penny Priddy: I was looking for some clarification on the definition of torture. If I were to not physically touch you, harm you, leave you in solitary, whatever, but if I were to say to you that unless you participate with me in a particular activity...and if you say no, you won't help us, that we will assassinate your family—your children, your wife, your parents—is that torture?

That is a common story that we hear from people. That's why I want to know.

Mr. David Dunbar: It's always hard to answer hypotheticals. I think I can answer your question by stating this, which is that definitions of torture, both at international law and I believe domestically, do not restrict themselves simply to the application of physical violence to the individual. It can also include psychological torture. Many definitions include it.

I believe the answer then to your question is potentially yes, but it's always hard with a hypothetical with limited facts.

Ms. Penny Priddy: I understand. Thank you.

Mr. David Dunbar: If the general point is whether psychological torture gets included in definitions of torture, the answer to that is yes.

Ms. Penny Priddy: Thank you.

The Chair: Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Chair.

I want to raise an issue. Actually, Mr. Ménard raised it with me privately earlier. He's not raising it. He's trying to sort out all his own amendments.

One of the things I would caution against...let me give you a scenario. Someone is tortured and they supply certain information, but in that information they indicate, let's say, that there's a cache of information in some hideaway somewhere, not to be overly melodramatic. But the authorities, the police, go to that location—that information is obtained under torture, that's not in debate—and they find the smoking gun or information that clearly points to a certain direction and some criminal acts or otherwise. I just think we need to be careful with the wording, that we wouldn't exclude that kind of evidence, that kind of information, which was derived under torture but which led to some other information that is useful and could be creating an issue in terms of public safety for Canadians.

The Chair: Mr. Dosanjh.

Hon. Ujjal Dosanjh: Mr. Chair, I am actually somewhat confused. Are we still discussing Mr. Ménard's amendment?

The Chair: Yes.

Hon. Ujjal Dosanjh: I think that our amendment, which follows this and amends another part of the same page, perhaps is broader.

I understand the worry about derivative evidence. I don't believe that either Mr. Ménard's amendment or ours prevents the law enforcement authorities from pursuing issues of investigation based on whatever information they have. It may impact on the admissibility of the evidence in a court of law, but that's up to a court to decide. All we're saying is that evidence that has been obtained as a result of torture isn't admissible. We want to make that explicit here. I don't believe we're impacting, with either his amendment or our amendment, the derivative evidence that you're talking about.

The Chair: Mr. MacKenzie.

Mr. Dave MacKenzie: Tell me the process, Mr. Chair. Have all three of these amendments now been brought forward?

● (1710)

The Chair: No. We're only dealing with one at a time.

I'll just let everybody know there are two other amendments dealing with a similar topic.

Mr. Dave MacKenzie: Okay, that being the case, can we vote on the first one, and then...?

The Chair: Yes. You've all heard the comments from the officials.

Does anybody else have a comment to make?

Mr. Colin Mayes (Okanagan—Shuswap, CPC): I have one question, Mr. Chair.

If we defeat this amendment now, because it is of the same substance as the other two amendments coming forth, can we deal with it? I'm wondering if we need to amend the motion forward. Can we do that? I just want to—

The Chair: You can defeat this, and you can go to the next one and deal with the same subject with a different amendment. If that one is defeated, you still have the third one.

Mr. Brown, did you have your hand up?

Mr. Gord Brown: It's 5:10.

The Chair: Yes, I realize that.

We will go to the vote on BQ-4.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Now we are going to amendment LIB-1.

Mr. Dosanjh, are you interested in that?

Hon. Ujjal Dosanjh: It's pretty self-explanatory. It would follow paragraph 83(1)(j) on page 7, as subclause 83(1.1), and it simply reads:

> (1.1) For the purposes of paragraph (1)(h), reliable and appropriate evidence does not include information that is believed on reasonable grounds to have been obtained as a result of the use of torture within the meaning of section 269.1 of the *Criminal Code*, or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention Against Torture.

I would commend this to all members, and then we can get on with it.

The Chair: Is there any other discussion?

Hon. Roy Cullen: Mr. Chairman, I have a question.

I'd like to ask the officials to comment. If we approve this amendment, could it lead to a judge excluding valid information derived from a statement made under torture? It would be derivative evidence, I guess.

Mr. Daniel Therrien: I'm sorry, but I'm not sure we have the amendment before us. I'm not sure which section is being amended.

The Chair: Why don't they have the amendments?

Hon. Sue Barnes: Well, they're just here to answer questions.

Hon. Roy Cullen: No, but they have to see the language.

The Chair: Okay, but it would be good for them to have a copy.

Mr. David Dunbar: It would aid us in answering a question if we had the wording in front of us. I don't have it.

The Clerk: They have it now.

● (1715)

Hon. Roy Cullen: Mr. Chair, Mr. Therrien will comment now on my question.

The Chair: If you're now ready, we'll continue this discussion.

Mr. Therrien.

Mr. Daniel Therrien: The main difference we see between this particular phraseology and both the amendment that Mr. Ménard proposed and the amendment that was made by the government side is exactly on the derivative use of information, as you raised.

In the two other motions we're talking about excluding statements obtained by torture. Here we're looking more broadly at information obtained as a result of the use of torture. I will just comment technically that between the two wordings, this particular wording would seem to deprive law enforcement authorities, or at least could quite possibly be interpreted by the courts as not allowing law enforcement authorities, to pursue the investigative lean you mentioned earlier.

The Chair: Mr. Dosanjh.

Hon. Ujjal Dosanjh: Mr. Therrien, would it be correct to say that it would not actually prevent the investigations from going on but it may affect the subsequent admissibility of that evidence in a court of law?

Mr. Daniel Therrien: I would agree with that.

Hon. Ujjal Dosanjh: Yes, so it doesn't prevent the investigation from going on. It doesn't prevent a crime from happening. If they get the information, they pursue it.

Mr. Daniel Therrien: It would prevent the use, possibly, of that, yes.

Hon. Ujjal Dosanjh: Subsequently in the court of law.

Mr. Daniel Therrien: Yes.

Hon. Ujjal Dosanjh: That's what we're trying to do. We are trying to prevent evidence that's been obtained by torture to be evidence against individuals.

Mr. Daniel Therrien: Well, it would prevent not only the direct evidence obtained by torture, but also the findings of the investigative body, because a court might well—

Hon. Ujjal Dosanjh: I hear you, but it would not prevent the law enforcement authorities from pursuing the criminal and preventing the crime at that particular moment, which is a big difference.

The Chair: You can think about that, Mr. Therrien, and comment in a moment.

Mr. Cullen.

Hon. Roy Cullen: That is a concern as well, but let's say there's information in front of a Federal Court judge, and there's an individual who's potentially going to be detained under a security certificate. The lawyer for the detainee says this information in front of the judge was derived by torture. Let's say there's no debate around that, that everyone agrees. But because the information was obtained under torture, that led the authorities to collect some evidence that was not hearsay evidence or unsubstantiated but evidence that clearly linked this particular person to some terrorist activities or involvement. A clever lawyer might say that evidence was derivative, it was obtained indirectly or directly by torture, so it's not admissible to the judge.

That's my concern. Could that happen?

Mr. Daniel Therrien: I think it could.

The Chair: Okay, this has been a very good discussion. If there are no more comments, we'll have the vote on this. You're all clear on what we're doing? This is amendment LIB-1.

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

● (1720)

Ms. Bonnie Brown: Mr. Chair, there was a tie, was there not?

Hon. Ujjal Dosanjh: No, it was six to five.

The Chair: We'll have to adjourn in a minute. Let's decide on when we're going to get together again.

What about tomorrow at nine o'clock?

Hon. Ujjal Dosanjh: We'll be done in half an hour.

The Chair: And the meeting will continue until we complete clause-by-clause of this bill.

Hon. Roy Cullen: Will the meeting be here?

The Chair: We don't know yet. We have to get translation and everything lined up.

This meeting is adjourned.

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