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## Thursday, February 3, 2011

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## Chair

**Mr. Kevin Sorenson**

# Standing Committee on Public Safety and National Security

**Thursday, February 3, 2011**

● (0900)

[*English*]

**The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)):** Good morning, everyone, and welcome. This is meeting number 51 of the Standing Committee on Public Safety and National Security, on Thursday, February 3, 2011.

Today we are going to the clause-by-clause stage in our consideration of Bill C-5, An Act to amend the International Transfer of Offenders Act. I'm told by our experts at the table that it is not a necessity that we go in camera. In fact, normally it would not be in camera.

Can we have a test on the translation, please? It's not picking up.

Is it working now? All right. Well, we're glad. We've found out that it's not a conspiracy, Mr. Gaudet—

**Voices:** Oh, oh!

**The Chair:** —you have to plug in to the right source.

What I would like to do at this time is invite the officials, if they would like to come to the table. There may be questions that arise from our discussions.

We welcome you back again. If you have your books with you, or the schedule of the bill, what we will do is postpone clause 1, the short title of the bill, until the end, and proceed with clause 2.

You've had a chance to look at clause 2. There are no amendments on clause 2. Shall clause 2 carry?

(Clause 2 agreed to)

(On clause 3)

**The Chair:** We'll move to clause 3. NDP-1 is in that package.

We'll go to Mr. Davies.

**Mr. Don Davies (Vancouver Kingsway, NDP):** Thank you, Mr. Chairman.

My first amendment would keep the legislation as it is in the current legislation, which is that it requires that the minister consider certain factors. The current act says the minister "shall" consider, and then enumerates a number of factors. The proposed amendment in Bill C-5 would change that "shall" to "may consider the following factors", which, in my opinion, is an inappropriate alteration.

At the very least, I think what we want to do when we consider something as important as a Canadian's right to enter their country to serve their sentence in Canada as opposed to another country is to require that any minister of any party direct their minds to certain factors. I think it's our job as parliamentarians to itemize a reasonable set of what those factors should be.

I don't think it's too much to ask that any minister, when faced with an application by a Canadian citizen who is incarcerated abroad, at the very least be compelled to address their mind to a set of factors that I think we would want that minister to address their mind to.

By saying "may", we're removing any legal requirement for the minister to address any of the following factors. Some of these factors are as we'll see; I won't get into them in too much detail, but one of them is whether the offender's return would constitute a threat to the security of Canada. I don't want that to "maybe" be a consideration; I want that to be a mandatory consideration by the minister.

The next factor would be whether the minister thinks that the offender's return to Canada would endanger public safety, including the safety of any person who is a victim, or the safety of any member of the offender's family, or the safety of any child, in the case of an offender who has been convicted of a sexual offence. I don't want that to be an optional consideration by the minister. That should be a mandatory consideration of the minister.

There's nothing in this bill that says the minister has to take an inordinate amount of time to consider these things, but the minister must, in my view, spend at least some time addressing their mind to whether those factors are in play or not when we consider whether an application for transfer should occur.

I know that we want to get this bill through today, so I won't speak for a long time on this, but in my respectful submission, the legislation's language as it currently reads, which requires the minister to consider factors, I think is appropriate. I would urge my colleagues on this committee to retain that language by changing the "may" back to "shall consider the following factors".

● (0905)

**The Chair:** Thank you.

Ms. Mendes, and then Mr. Holland.

[*Translation*]

**Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.):** I have a comment to make on the French translation of the amendment. I think it should be "*le ministre doit tenir compte*" and not "*tient compte*". It's not in the present. The right wording is "*doit tenir*". I think that properly reflects the meaning of the change proposed. This is strictly a translation issue.

[*English*]

**The Chair:** Mr. Holland.

**Mr. Mark Holland (Ajax—Pickering, Lib.):** Thank you, Mr. Chair.

Just in a generalized sense as we go forward, I, too, share the concern with the word "may", because it leaves it too open-ended. I think if there's a purpose to the bill—to provide direction to the minister—then what's the point of having a whole list of conditions that the minister should consider if he doesn't have to consider them? The bill might as well say, "Minister, do whatever the heck you want".

There would be a number of examples, I think, where we have to be more clear in the fact that the provisions of this bill need to be adhered to and followed and that the minister must have some of the reasons that are explicitly mentioned in the bill in order to take action.

**The Chair:** Thank you.

Mr. Rathgeber, and then Mr. MacKenzie.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** I'm opposed to this proposed amendment put forward by Mr. Davies. It appears to me that the purpose of the bill...and as Mr. Davies outlined in his dissertation or his comments, every case is very specific, and there's a whole list of factors that may be considered. Not all factors are going to be relevant, even remotely, in all cases.

One of the factors that has been included in this new legislation is, for example, the health of the offender and whether that offender may need treatment. That's not going to be relevant in, I would suggest, most cases. So I think the discretionary "may" is more appropriate than the mandatory "must", and I'll be encouraging members on this side of the table to vote nay.

**The Chair:** Madame Mourani, and then Mr. MacKenzie.

[*Translation*]

**Mrs. Maria Mourani (Ahuntsic, BQ):** Thank you, Mr. Chairman.

First of all, we are in favour of the amendment, simply because "*peut tenir compte*" leaves room for arbitrary and subjective decisions, and all kinds of "environmental" circumstances. I've given you some examples. We have discussed this in committee.

I would go even further. It may even open the door to corruption. We assume that everyone is well-intentioned. However, supposing someone incarcerated abroad applies for a transfer and his family happens to make large donations to a political party. Could that be a factor? No, but things like all the items listed in the bill could be used—for example, the ability to consider human rights. Just about anything could be used to justify that person's transfer to Canada, even though there are actually other goals.

And finally, the verb "*pouvoir*", in the phrase *pouvoir tenir compte*", already introduces an element of arbitrariness, subjectivity and "human nature", so to speak.

Mr. Chairman, I want to state clearly that we intend to vote in favour of the amendment. My colleague, Ms. Mendes, is absolutely right. The French translation should be "*doit tenir compte*".

[*English*]

**The Chair:** All right.

The difference in translation has been noted at the table, and that is a point they're going to look at.

Mr. MacKenzie.

● (0910)

**Mr. Dave MacKenzie (Oxford, CPC):** I wonder whether these amendments are actually in order. The bill has received second reading; therefore, amendments must be within the scope of the bill. The House has approved the principle that the minister should have discretion by approving the words "in the Minister's opinion" throughout the bill, and both amendments remove those statements.

It is legitimate to canvass issues related to factors that should be given as amendments, but I would argue that the removal of the discretion is beyond the scope of the bill. If you look at the amendments, the minister, to make positive findings of certain outcomes and to grant the transfer of those findings are not made... the problem is that these cases are not adversarial. Only one party is heard from in these cases, and that is the applicant. Therefore, there is no one to test the applicant's case and no one who has an interest in presenting contradictory facts.

Under the amendments, an applicant would be returned to Canada based upon a bare-bones application, because the minister does not have the basis to make a finding that something will happen, and requiring that would take some tests.

In addition, Mr. Chair, I'm wondering if we could hear from the officials at the table about how the process works, in fact, about the mechanics of the process. That might be enlightening to all of us in regard to when applications are made to the minister.

**The Chair:** To our experts at the table, the question—

**Mr. Mark Holland:** Point of order.

**The Chair:** Mr. Holland.

**Mr. Mark Holland:** The point of order is simply that I believe a point of order has been raised that is rather material to our debate and to the proceedings. I wonder if we can get a ruling on the contention of Mr. MacKenzie. I certainly wish to speak on it as well. But I think it would be important for us to get a ruling from the chair as to the admissibility of amendments submitted before proceeding. I think that's a fairly major point and needs to be clarified before proceeding. I don't know, Chair, if you will permit me to speak to that or if we're considering it.

Mr. Chair, what's the purpose of the committee meeting, if not to place what I think are relatively minor amendments that keep within the spirit of the legislation? As I understand this legislation, it's to provide direction under which cases detainees are or are not to be transferred. The stated purpose of the bill is to augment public safety. The concern being expressed, I think, by many members around the table is that arbitrary discretion on the part of the minister—not discretion, period—is what is at concern. If the minister has strong and compelling reasons, as outlined in this bill, to not grant a transfer, then so long as they are following the provisions of this bill, there isn't an issue.

If, on the other hand, the minister decides for arbitrary reasons that are not contained within this bill to not offer the ability of a transfer to take place, that's another matter. So therefore, I think, amendments in this regard are very much in order and very much need to be introduced, because, look, without going into debate ad nauseam... very quickly, the point of the matter remains that these are not people being transferred from foreign prisons onto the streets of Canada. There seems to be an effort on the part of the government to display this idea that these prisoners are going to be dumped onto the streets of Canada and that the whole purpose of the transfer is to keep people incarcerated. That's not what's at issue here.

The issue is where people are going to spend the time in which they are incarcerated, where they will in fact be incarcerated, and whether or not once they are out they're even going to have a record. We know if somebody is incarcerated in a foreign jurisdiction that their success in terms of rehabilitation...the rate of reoffending is higher when that incarceration doesn't take place in Canada. We also know that somebody who is transferred to Canada, spends their time in a Canadian prison, and is then released will have a record, and there will be the opportunity to follow up on that. That is not the case with somebody who has not spent their time in Canada.

So if the genuine purpose and intent is to augment public safety, then we have to be very careful under the conditions in which the minister uses this ability to transfer. On that basis, I would submit to you, Mr. Chair, that these amendments are essential to the stated purpose of the bill, and that what is being attempted in the amendments is not to eliminate the discretion of the minister, but rather to scope the discretion of the minister such that it is targeted at things that will actually and meaningfully meet the title of the bill.

● (0915)

**The Chair:** Mr. Davies.

**Mr. Don Davies:** Although I know this is not determinative, the summary says: “This enactment amends the International Transfer of Offenders Act to provide that one of the purposes of that Act is to enhance public safety and to modify the list of factors that the Minister may consider in deciding whether to consent...”.

The two major purposes of the bill, I would argue, are to enhance public safety and to modify the list of factors.

When we take the first purpose of the act—and I'm speaking to Mr. MacKenzie's proposition that my amendment is not in keeping with the purpose of the bill—if one of the purposes of the act, as stated in the summary, is to “enhance public safety”, how do we enhance public safety by agreeing to an amendment that allows the Minister of Public Safety to ignore whether or not an offender's return to Canada will constitute a threat to the security of Canada? How does it enhance our public safety by giving the legislative power to the minister to say, “I'm not even going to think about that”? How does it enhance public safety to give the minister the legislative power to ignore whether an offender's return to Canada will endanger the safety of any person who is a victim?

That's what the Conservatives want to do. They want to say: “No, we want to make it so the minister doesn't have to consider those things”.

It's the NDP, and if I can boldly state what I'm hearing from the Liberal Party and my colleagues in the Bloc...we're the three parties that are saying no, the minister must consider those things. He must consider whether or not there is threat to Canada and whether victims may be harmed by the transfer. I would argue that our amendment is consistent with the very purpose of the bill, which is to enhance public safety, and the Conservatives' position is actually violative of the purpose of the bill, which is to enhance public safety.

I also would argue, again, that the second purpose of the bill is to modify the list of factors. So if we're modifying the list of factors—if that's the purpose of the bill—then going that step further and saying that we don't think it's too much to ask that the minister should consider, must consider, those factors we're modifying is consistent with that purpose as well.

Last, I would say what is going to come out I think throughout all of the amendments that the New Democrats are going to propose. We heard evidence before this committee—and I don't think it was contradicted—that public safety is enhanced by the transfer of offenders to our countries. We heard evidence that if you keep an offender serving their sentence in another country for their full sentence, they are coming back to Canada, and they will come back to Canada in some cases without our even knowing if they've been convicted of a crime, and without us having any ability to supervise them in the community.

We heard a lot of evidence that by facilitating the transfer of a Canadian abroad and getting them into our—

**The Chair:** Mr. Davies, as much as your debate continues on your amendment, we are really debating the point of order as to whether or not it's in order.

You still are within the realm. I am going to give you the opportunity at the end, because it's your amendment, to have some concluding comments.

**Mr. Don Davies:** Thank you, Mr. Chairman.

I'll just wrap up my sentence, then, and then I'll certainly defer. It has to do with the discretion, because what I am saying is that by requiring the minister to consider factors, it will compel consideration of the broad range of factors that go into whether a transfer occurs.

The transfer, as I was arguing, does enhance public safety, because when those people come back to Canada and they come into a Canadian prison, we know of their criminal record and we have the opportunity to give them programs. We also have the opportunity to apply conditions and supervise them in the community, which, I argue, is preferable to letting them walk into our communities without any conditions at all.

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

Mr. Rathgeber.

**Mr. Brent Rathgeber:** Again, Mr. Chair, I encourage you to strongly consider Mr. MacKenzie's recommendation that this amendment is out of order, and to hear from Ms. Campbell, if necessary.

Mr. Davies' amendment, although I think it is well intentioned, is going to lead to all sorts of judicial review applications, because there are some factors that are simply not applicable in many cases.

Again, I look at proposed paragraph 10(1)(g) “the offender's health”. If there are no health issues to be raised, the minister cannot possibly consider that factor. Therefore, it's going to invariably lead to a judicial review application saying that the minister didn't consider all the things he was required to consider. But in many, many cases he will not be able to.

So I think Mr. MacKenzie is correct. I think this amendment is out of order. I would really like to hear from Mrs. Campbell on this point.

● (0920)

**The Chair:** As far as hearing from Ms. Campbell goes, that may be not so much a point on the admissibility of the point of order. Certainly, before we vote on whether it should carry, you may ask for Ms. Campbell and I would go for that.

But we're dealing with Mr. MacKenzie's point. Is there anyone else on the speakers list?

Mr. Kania, do you want to speak on the point of order or on the amendment?

**Mr. Andrew Kania (Brampton West, Lib.):** Yes, just briefly.

I support the comments of Mr. Davies. Obviously he's correct. It's a very lucid analysis.

Mr. Rathgeber, as a fellow lawyer, I must say I'm surprised by what you just indicated. It's quite obvious that a judge, when looking at this, can consider whether the minister has considered these factors. If there is no evidence, if there's nothing relevant for a particular point of the legislation, it doesn't mean the minister is in trouble. It simply means the minister has put his or her head to whether that factor was in play, and they can make the decision that there was no evidence—nothing relevant to it—but they still considered it. I don't understand your analysis whatsoever.

I think one of the problems is that we had witnesses admit during the hearings that one of the reasons for these amendments is to avoid court cases that say “the minister didn't follow the law”, so therefore they send them back and say there's a problem. The whole problem with these amendments...and I think you're right in terms of what they were trying to accomplish. They're trying to avoid the court cases. They're trying to avoid judicial review in circumstances where it's quite clear that the minister is not following the law.

So from my particular analysis, the point of order is a different issue, but on the amendment, we need to have the amendment in order to be fair and have responsible legislation.

**The Chair:** We have a number of amendments here and we are not going to rule on all the amendments. But on the admissibility of this amendment, after listening to all sides discuss this and listening to counsel at the table, not just from the clerk's side but also from the legislative side, I am persuaded that they are in order.

It may even change some of the spirit of the bill. That may be your argument: that it's changing in too vast a way the spirit of the bill. Certainly, clause-by-clause does give the opportunity to do it. We also have the opportunity to debate the amendment and continue, but as for whether or not this amendment is in order, I'm persuaded that it is in order, so we'll go back to.... That's the chair's decision, so unless there's a challenge, we'll now continue with the debate on the amendment.

Mr. MacKenzie.

**Mr. Dave MacKenzie:** Mr. Chair, just so the committee perhaps understands the original legislation and how it functions, I think it would be instructive for all of us to hear from the officials who in fact make recommendations on these matters to the minister. Just so everyone understands, the minister doesn't sit at his desk saying yes or no without having some directives from and consultation with officials. I think they're certainly cognizant of the whole group of factors and what they mean. So making the changes may not enhance....

**The Chair:** I will ask the department or the experts here to discuss this amendment a little and what impact it would have on this legislation.

Ms. Campbell.

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

I will be very brief and then turn it over to Mr. Laprade, who is legal counsel, to speak specifically to “may” versus “shall”. Obviously this is a list of factors that is longer than what appears in the current act. In part, this was an effort to reflect the case law that has developed and to reflect the scope of the minister's discretion that has been accepted or validated by the courts.

One of the challenges with this longer list is that if it becomes “shall”, the very last factor is “(l) any other factor that the Minister considers relevant”. That, I would suggest, becomes a bit problematic if you're saying that he “shall” consider any other factor when it is an open clause or, as is commonly referred to, a “basket clause”. I appreciate that is also the subject of a motion to amend before the committee.

On the nature of this list, I think the intention was to reflect the case law and outline the factors that may be pertinent, but not to establish a rigid and rather lengthy checklist. But on the issue, more legally speaking, of “may” versus “shall”, I would ask if Mr. Laprade has anything to add.

● (0925)

**Mr. Michel Laprade (Senior Counsel, Legal Services, Correctional Service of Canada):** Mr. Chairman, as Mary pointed out, the question of drafting and adding “may” instead of “shall” in the drafting of that clause was influenced greatly because of the last paragraph that is included in proposed section 10, which basically provides the minister the ability to consider any other factors.

Having a clause that would say “shall” in there would be nonsensical. You can't draft legislation in a way such that you're saying that you shall consider any factor you shall consider relevant. It makes no sense. That's why we needed to add this language in the clause the way it is.

I would like to point out something about the existing language, because what's being suggested is that we apply the existing language as if the word “shall”, in the language we have right now, directs the minister to a certain conclusion where an offender meets a criteria, and that is not the case.

Just on February 2, there was a series of decisions of the Federal Court in which Justice Phelan, in the case of Holmes, made a statement. I think I'll read it for you. It basically tells us how the court reads the word “shall” right now. He stated:

> Further, none of the factors to be considered, including s. 10(2)(a), are determinative of the result. They are simply factors to be weighed by the Minister in a reasonable and transparent way.

So they are not determinative of a conclusion; they're simply factors the minister considers. So when we added the last paragraph to say and “any other factor that the Minister considers relevant”, the word “may” was added to the clause because we needed that. But it still is the same approach that will be taken in interpreting how the minister makes his decision. It's always going to be based on those considerations.

And none of the considerations is determinative. They won't be determinative after we change the legislation to a “may”, and they are not right now, while we have “shall”. It doesn't indicate that if a person, an applicant, meets one of those factors, the minister will inevitably say yea or no to a particular application. That's not what it means.

**The Chair:** Mr. Kania, and then Mr. Davies.

**Mr. Andrew Kania:** Mr. Laprade, I agree with you, obviously, that the enumerated factors are something that the minister is currently required to take into account. They don't lead, by definition, to a particular result. The court would just want to know that the minister has put his or her mind to the factors. That was part of what I was just saying last time.

Now, when you keep saying “the last paragraph”, I just want to make sure, for the record, that everybody's clear what that means. That's proposed paragraph 10(1)(l), which says “any other factor that the Minister considers relevant”, correct?

**Mr. Michel Laprade:** Yes.

**Mr. Andrew Kania:** Did anybody at the table recommend the addition of that paragraph to this legislation? Did any of you identify a problem and say that for some particular reason we need to add that paragraph?

**Ms. Mary Campbell:** I can't recall, and I wouldn't be in a position to discuss advice that was provided to the minister or cabinet.

**Mr. Andrew Kania:** I'll take your comment about “can't recall”, because I would be very surprised if any of you actually recommended that. I see that as a nonsensical paragraph. Certainly by the way it's worded, in saying “that the Minister considers relevant”, that could be anything, whether it's the colour of the person's eyes. It's really quite ridiculous—

● (0930)

**Ms. Mary Campbell:** With respect, Mr. Kania, I might just jump in. It is circumscribed by the case law, and the case law has been quite clear that in fact decisions have to be made considering relevant factors and, indeed, not completely irrelevant or factors such as hair colour or eye colour.

**Mr. Andrew Kania:** But that would be under the old legislation. This legislation would say “any other factor that the Minister considers relevant". We don't have a court interpretation on that, because this would be the minister's determination of what's relevant.

Here's my question to you. You're saying that the problem with “may” and “shall”, in terms of the first proposed subsection, is because of this last paragraph, 10(1)(l). In circumstances where I don't know anybody who's identified this as a problem, I don't know anybody who says we need this paragraph, I would suggest to you that we can solve the problem in terms of “may” and “shall” quite easily, by simply deleting proposed paragraph 10(1)(l). Then you would really have no problems with keeping it as “shall”, would you?

**Ms. Mary Campbell:** Well, the only comment I think I can make is that, from an adviser's perspective, basket clauses are not unusual. It's not at all strange to have such a clause, and it is always circumscribed by rational connections, relevant connections. I think really, just to emphasize Mr. Laprade's point, with an expanded list that reflects the case law to date and the provision of a clause that allows potentially for new factors that perhaps have not yet arisen, and every case presents something slightly different that is beyond imagination—

**Mr. Andrew Kania:** But you added a point there that didn't respond to my question. My question was, if we eliminated paragraph (l), you would then have no problem with keeping the initial wording as "shall" as opposed to "may", because that takes away everything you've just been saying about what the problem is. Correct?

**Ms. Mary Campbell:** I'm not sure that I can answer that. I think it is more of a legal question at this point.

**Mr. Andrew Kania:** Then maybe Mr. Laprade can answer.

But I also want to comment on what you just said about basket clauses. I agree with you that it's not unusual to have a basket clause, but it depends upon what the wording of the basket clause is. This is not a typical one that says "and any other relevant factor", because then a judge could actually see what was considered and make a determination about whether that factor was relevant or not.

So if the minister decided that the person's eyes were blue, and therefore yes or no, a judge would obviously say that's not relevant. But the way this is worded—"any other factor that the Minister considers relevant"—that is absolute discretion for the minister, absolute discretion to decide what the factor might be. This is a clause that in my view is attempting to circumvent and get around judicial review, which is exactly the reason other witnesses said we had this legislation: to avoid those court cases that told the minister he was not doing his job and couldn't get away with it.

**Ms. Mary Campbell:** I would just point out that the other provisions of the act continue to apply. If the minister were to deny a case using (l) and using a factor that others considered questionable, the minister would be obligated to provide written reasons to an applicant where a denial is issued. Those reasons would be on the record and of course would then be subject to judicial review if the applicant felt so inclined.

**Mr. Andrew Kania:** Sure, but this is the ultimate power clause. This is the clause that says, "I'm the minister, look at this". It's any factor "that the Minister considers relevant". "I'm the minister, I think this is relevant, no judicial review": that's what this clause is about.

**Ms. Mary Campbell:** If I may say this, if in making a decision, the minister considers—very hypothetically—hair colour, and that was the basis for denying a transfer, that would be communicated openly and transparently to the individual, and the individual can take whatever action they choose to take. Based on the court decisions so far, the courts have provided quite a bit of guidance as to what is relevant in the exercise of ministerial discretion.

**The Chair:** Mr. Laprade.

**Mr. Michel Laprade:** The courts have said the factors are not exhaustive. The courts have also said that if the minister is to consider a factor that's not enumerated in legislation, that factor still has to be in relation to or relevant for the purpose of the ITOA.

**Mr. Andrew Kania:** [*Inaudible—Editor*]...this clause?

**Mr. Michel Laprade:** Even with this clause, it would be exactly the same thing, because—

**Mr. Andrew Kania:** How do you know? It's not a law yet.

**Mr. Michel Laprade:** —the legislation has a purpose and an objective.

**Mr. Andrew Kania:** Read it. You're a lawyer.

● (0935)

**The Chair:** Let Mr. Laprade continue.

**Mr. Michel Laprade:** The legislation has an objective and a purpose. You can't simply create through a basket clause, the one we have, a clause that would put the minister outside of the legislation so that he could make decisions that are not at all in line with the object, the purpose of the act itself, which is international transfer and the context in which it works. I don't think this concern you have would appear.

**Mr. Andrew Kania:** Ms. Campbell was asking—

**The Chair:** Very quickly, Mr. Kania. Then we'll go to Mr. Davies.

**Mr. Andrew Kania:** Ms. Campbell was passing the question to you, to go back to my original question, which was, if we eliminate (l)...because your analysis was that the problem with "may" and "shall" was because of (l). If you eliminate (l), then I assume, based on your first analysis, that you're okay with keeping it a "shall".

**Mr. Michel Laprade:** If you eliminate (l) in the drafting the way it is, technically you can stay with "shall" and the courts will still interpret the legislation as being non-exhaustive. Still, they'll say, it is non-exhaustive and the minister can take any factor he considers relevant insofar as it is in line with the object and purpose of the act. That's what the courts have already said about the legislation as it exists now, so it won't change.

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

Mr. Davies.

**Mr. Don Davies:** Well, I am reminded of the old adage that one can ask three lawyers and get 10 different opinions. I think it's a healthy discussion we're having, and I think there's some validity to everybody's points.

I want to reassure Mr. Laprade—this is my amendment—there is nothing whatsoever in my amendment that is intended, by changing "may" to "shall", to try to direct a particular outcome. So I was a little bit puzzled by your opening comments that responded to that, because that's certainly not what anybody on this side of the table is saying.

The bare question is a bare legal one, which is, do we as legislators want to draft legislation that requires a minister to address their mind to certain factors or leave it open to their discretion about whether they address their mind to certain factors? That's it.

I've been dealing with "shall" and "may" for 20 years in my legal career, and that is an absolutely legitimate question and one that is very well substantiated in law. Again, I want to emphasize Mr. Kania's point, again expressing that requiring someone to consider a factor doesn't mean that they can be overturned for anything unless they don't address their mind to that factor. It's just that the courts would be reviewing to make sure that the minister did in fact address their mind in good faith to the factors listed. It doesn't mean that the factors are present; it just means they addressed their mind to it.

I just want to say as well, because you have brought up the connection between "shall" and (l)...the first thing I want to tell you is the NDP does have an amendment to eliminate (l). Number two, the thing about (l) is—and here is one of my positions, which I won't go into too much detail—

**The Chair:** Very quickly, Mr. Davies, because we will have time to debate (l) when we get there—

**Mr. Don Davies:** Yes, but with respect, Mr. Chairman, Mr. MacKenzie asked the counsel to comment and he brought it up, so I can deal with it.

Frankly, we don't need any of the other factors: just keep in (l). Why don't we just say.... If an application for transfer comes in, how about this: "The minister may consider any factor that the minister considers relevant"? Boom, we're done. You don't need anything else.

I also want to comment to Mr. Kania that although I agree with him in substance, there's something I disagree with him on. I want to say this: there is a slight difference, but a pivotal and profound difference, between wording a basket clause that says "and any other factor that is relevant" and a clause that says "and any other factor that the Minister considers relevant". Those are two different things, because the first one, relevance, which is a very well-established test in law, establishes an objective test and an objective review. The second one places an objective review on a subjective decision.

Now, I've done a lot of administrative law in my time, and I can tell you that you're right: that doesn't give licence to the adjudicator to come up with any perverse, irrational factor and call it relevant. The courts will always review, but it lowers the test when the test is one of someone asking if this is a relevant factor or not, or did the minister consider this to be relevant? They will give more deference to a minister if they apply their subjective discretion in terms of determining what's relevant.

Still, of course, I agree with you, with the overriding review to make sure that it's not perverse or irrational or bearing no resemblance to the decision under question. I appreciate your remarks to us today, but with respect, I don't think any of that changes the fact that the bare question before this committee is this: do we want to require the minister to consider factors or do we want to leave it open to their discretion whether they consider them at all?

● (0940)

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

Madame Mourani.

[*Translation*]

**Mrs. Maria Mourani:** Thank you, Mr. Chairman.

Mr. Laprade, looking at the bill as a whole, I see that there is no criminological analysis. And, in fact, a number of bills reflect the same trend.

In terms of transferring inmates from one country to another, or even from one institution to another inside Canada, the risk analysis is not as for a transfer of offenders from an institution to the outside; it just isn't the same.

In this bill, based on the underlying risk analysis, it's as though inmates in foreign institutions were being paroled. An example is paragraph 10(1)(h) which talks about "whether the offender has refused to participate in a rehabilitation or reintegration program". That is a risk assessment factor for parole, not for transfers from one institution to another. In fact, "whether the offender has accepted responsibility for the offence" is one of the criteria typically used to assess the risks associated with parole.

Not only is the bill problematic because of the subjective nature of the power and duties associated with it, but some of the factors listed have absolutely nothing to do with the kinds of things that should be considered, from a criminological point of view, when an inmate is transferred from one institution to another. And yet these factors are extremely relevant in any risk analysis associated with parole. That is already stated in the Corrections and Conditional Release Act. Officers do that on a daily basis, assessing the degree to which there is recognition of the offence committed, participation in programs, and so on.

In my opinion, this bill has basically missed the boat in terms of criminological analysis. I am not blaming you in any way for that; it may have nothing to do with you. I'm sure you only follow the instructions you're given. But it is systematic, Mr. Laprade. That lack of criminological analysis is evident in every single bill tabled by the government. It might be a good idea to have a criminologist on the team. It might result in better bills, from both a criminological and legislative standpoint.

Personally, as a criminologist, I believe this bill requires a great many amendments, particularly with respect to powers and duties.

Thank you, Mr. Chairman.

[*English*]

**The Chair:** Did I see a hand over there? Mr. Rathgeber?

I don't have anyone else on the speaking list here, so are we ready to deal with this?

We do have the one just on the wording. This is a subamendment that we would have to deal with in the amendment, and that is Ms. Mendes' subamendment dealing with the French, as Madame Mourani said, to make it come into line with what is in English.

So the first vote will be on that subamendment to have the wording be the same as the wording would be in English. Are we all in favour of the subamendment, Ms. Mendes' subamendment to Mr. Davies' amendment?

(Subamendment agreed to)

**The Chair:** Are we ready for the question on the amendment? Shall the amendment carry?

(Amendment agreed to on division)

**The Chair:** For NDP-2, it's the same as L-1.

You guys are working together again, I can see. You have basically the same amendment here, which is good.

I'll have Mr. Davies speak to NDP-2.

● (0945)

**Mr. Don Davies:** Thank you, Mr. Chairman.

I do have to correct you. The Liberals and NDP were not working together on this. We just happened to come to the same conclusion on this.

In keeping with, and flowing from my comments already made, the purpose of this amendment is to strike the words "in the Minister's opinion", which is what the Conservative amendment seeks to do, in that it seeks to inject into the consideration process the words "in the Minister's opinion".

Once again, what we would like to be considered is an objective standard, not a subjective one. In the case here of proposed paragraph 10(1)(a) under consideration, the clause would require the minister to consider whether, as it presently reads, "in the Minister's opinion, the offender's return to Canada will constitute a threat to the security of Canada". With respect, I think it is a dangerous and inappropriate amendment to start changing the consideration of a factor that can be reviewed on an objective standard, to start changing that to a subjective one.

Again, I've done a lot of administrative law and judicial review cases in my life, and I know that if this change were allowed to go forward as the Conservatives propose, and this came before a judge upon review, the first question they would have is whether the judge is influenced or not by Parliament's deliberate decision to inject the words "in the Minister's opinion". I know there are canons of construction in law, that words are put in legislation, and they must be given meaning.

Another canon of construction is that Parliament intends what it says. So if we change it to say "in the Minister's opinion", then what we are doing is watering down that objective test and injecting an element of subjectivity. The question then becomes whether or not the minister's opinion is something that is reviewable.

Once again, as I said before, I don't think that gives the full gamut. It doesn't open up the door to any item that the minister could consider. It still would be I think circumscribed, as has been said by Counsel Laprade, by factors in law that can't be perverse and can't be irrational, but certainly it widens the test to what a particular minister of the day may subjectively think or not, and that is unfair. I think it also will affect the ability of our courts to review these decisions on the basis of fairness.

I would urge my colleagues to uphold an objective standard in law, one that allows the minister to make a decision, but to have that decision reviewed on the basis of objective evidence and objective reasoning, not on one person's opinion.

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

Mr. MacKenzie.

**Mr. Dave MacKenzie:** Chair, I respect that Mr. Davies has been a labour lawyer for a long time and has appeared before many judicial bodies, but I really, with all due respect, don't think that he should determine what a judge would or wouldn't say. I know that I've had the opportunity to be on the other side a few times, and lawyers tend to argue both sides so the judge makes up his mind. It shouldn't happen in this body that we determine what judges would say.

Equally, I think, it's fair enough for a court, if in fact it gets to that point, to consider the relevancy of what the minister would certainly consider. These are not black and white issues. These are issues that are in fact determined on the basis of opinion, but they're based on opinion given by officials who study them based on the law that's there.

I know the coalition will talk about the Conservatives, but these are laws to be put there for the Government of Canada, for the minister of the time. He makes that stretch that it's the Conservatives. It may or may not be his party at some time. It might be a coalition party. Who's to know?

At least those are the issues that the officials who make the references and the recommendations to the minister would have as part of their tool box, if you will. I think it's logical. I don't think we should look at them in terms of total black and white. I think the officials could tell you that they look at these issues as being what they would then pass on to the minister as a recommendation.

● (0950)

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

Go ahead, Mr. Holland.

**Mr. Mark Holland:** Thank you, Mr. Chair.

I'm not so sure that it's us working closely together or that the flaws are so self-evident that they write themselves....

I'm also not sure, when Mr. MacKenzie refers to coalitions, which coalition he's referring to. Is it the Conservatives and the Bloc currently working on the pardon issue or the...?

**The Chair:** Just continue on the actual amendment, Mr. Holland.

**Mr. Mark Holland:** I'm just curious. I'm just curious about his wording.

In any event, look, I think in a generalized sense that the point to be made here is that when you take a look at the wording without "in the Minister's opinion", it's then left up to the courts to use a reasonable person.... The court defaults to an ordinary, average, reasonable person on whether or not they could come to a conclusion, with the facts in front of them, that the person represents a risk. The only reason you would insert "in the Minister's opinion" is to lower that threshold; it would lower it from being in the mind of a reasonable person to being in the mind of the minister.

Now, what you're asking the court to do is to determine whether the minister feels that there is a threat. To use an extreme example, if you have a minister who is particularly paranoid and legitimately afraid of everything—actually, we don't have to think too hard to think of that example—and who sees scary things all the time everywhere, all of a sudden, the courts could say well, yes, in his mind, pretty much anything is scary. Now obviously I'm joking to illustrate a point, but the point does remain that it significantly lowers the bar.

This gets me to the point more broadly that Mr. MacKenzie made earlier on about the admissibility of our amendments. I begin to wonder if the real purpose of the bill is not in fact its stated purpose but is to simply lower the bar, so that you don't have to worry about so many court challenges. I wonder if the real purpose of this bill is to in fact give the minister a much freer hand to do whatever the minister wants.

Because to go to the point that Mr. Kania was making earlier, with all due respect, if the minister has anything that really is in his or her mind, this bill allows the minister to feign concern in any particular area, provide some evidence that it is the concern, and make it almost impossible to challenge that decision. It builds a fortress, a wall, a castle, around the decision of the minister, with very little placed before it. It gives the minister the ability to put ironclad protection around what he or she decides is or is not important. That, in my opinion, is a very different objective than the stated objective of this. Maybe that's why we have a difference on whether the amendments are or are not admissible.

As a general comment going forward—and I won't make it again—I think it's extremely important for us to not lower that bar. Let's keep it at the bar the law keeps it at, which is "in the mind of a reasonable person". Would a reasonable person ascertain these factors to be relevant to deny a transfer? That's an appropriate and intelligent bar to set. To lower it makes, in my opinion, no sense.

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

We'll go to Mr. Rathgeber.

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

I'd just like to advise the committee that I will be voting against all of the proposed amendments by the NDP and the Liberals, but I will only state my objections once, for the record.

The purpose of this bill is to replace four mandatory requirements for the minister with 12 or 13 discretionary considerations for the minister to consider if he or she deems those considerations relevant. Almost all—or perhaps all—of these proposed amendments remove ministerial discretion and make the 12 or 13 or 14 considerations mandatory. I would suggest to the committee that the proposed amendments are completely negative to the intent of the bill as referred to the committee by the House.

However, as the chair has ruled the first amendment in order, I suspect that a similar ruling would be forthcoming with respect to the rest of the amendments. But I believe that all of these amendments defeat the initial purpose of the bill, which was to give the minister discretion with respect to 12 or 13 factors. The amendments clearly are trying to remove that discretion and I'll be voting against each and every one.

With those objections on the record, I will defer back to the chair.

● (0955)

**The Chair:** Mr. Kania.

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

If you look at the addition of "whether, in the Minister's opinion", which is sort of added everywhere—on page 2, it's in proposed paragraphs 10(1)(d) and (e)—there's only one purpose to put that phraseology in. It's to provide extra shielding around a minister's discretion if there's judicial review. That is an attempt to avoid judicial review and to keep judges away from telling the minister that he or she has made a wrong decision, just as they've done, in a number of cases recently, under this government.

So from my perspective, when you look at the purpose of the legislation, which is to "enhance public safety"—that's one of them, at least—it makes no sense to me that.... This is part of what my colleague from the NDP indicated, and he's right. It makes no sense that you're providing further discretion to the minister, in essence allowing the minister to do whatever he or she wishes. If you take out "in the Minister's opinion" in these various clauses, all you're doing here is you're requiring the minister to consider that factor as one of the factors in making the decision.

To take it to a different level, what you're actually doing by adding "in the Minister's opinion" is you're allowing the minister not to consider that factor, which could go against public safety and the best interests of Canadians; secondly, you are taking away and reducing the possibility of judicial review to get around those court decisions that the government doesn't like, based on their previous actions.

So from my perspective, in terms of "a reasonable person", I don't understand the amendments.

I don't see how in any way it enhances public safety. Secondly, I think it goes against the rule of law.

So I'll be voting against them in terms of the amendments.

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

Mr. Davies.

**Mr. Don Davies:** Thank you, Mr. Chairman.

I have a couple of quick points. First of all, the Conservatives propose this change to the current law, to add the words "in the Minister's opinion", so the change must mean something. They intend to do something by adding those words. Of course they're attempting to take, as Mr. Holland eloquently put it, an objective standard that can be reviewed on an objective basis so that a court would determine in the case of proposed paragraph 10(1)(a) whether the offender's return to Canada "will constitute a threat to the security of Canada". They want to inject into that a test of whether, "in the Minister's opinion", that would be the case.

That leads me to my second point: that concentrates far too much power into the hands of one person, in my respectful submission. The decision then becomes whether the current sitting Minister of Public Safety thinks, and only if he or she thinks, an offender's return to Canada would constitute a threat to the security of Canada. Again, I'm concerned about the review standard being altered by a court on review, which no longer would be able to review whether or not there was some evidence upon which a reasonable person could find that the offender's return would constitute a threat to the security of Canada. It alters that test in some fashion because the Conservatives are injecting the words, so it has to make some difference. It can't be the same.

I also want to point out that in the evidence before this committee, it was my recollection—and Ms. Campbell or somebody else can correct me—that the jurisprudence on the reviews of the minister's decisions has not established a record that shows there's a serious problem of the courts overturning ministers in this country. I don't think that's the case. I think there has been a small number of cases that have gone to judicial review and a very small number of the ministers' decisions have been overturned. That is my recollection of the evidence.

I also just want to direct a few comments at the comments of Mr. Rathgeber. Herbert Spencer has a famous quote about the problems with contempt before investigation. I would amend that to say that there should be some contempt about voting before listening to debate, because he's already indicated that he's going to vote against every amendment before he's even heard them.

I can tell that's an uninformed decision because he said there are 12 or 13 factors for which this legislation would give discretion to the minister. If he actually read the amendments, he would see that the amendments seek to remove at least four of those criteria. So it's not 12 or 13; we seek to cut down the criteria. I would urge him to keep an open mind and listen to the debate and discussion on each amendment, as I think all of us should do. We should be respectfully listening to all the points being made and considering all the amendments.

I just want to say again, and finalize my comment about Mr. MacKenzie, that nothing in my comments suggests that I know or don't know what a judge is going to say or do. Now, I know that Mr. MacKenzie is not a lawyer, and I used the phrase "canons of construction", so I'll tell him what that means.

In law, there are rules of statutory interpretation. This is what you learn when you go to law school, and you learn how judges will interpret legislation. There's a series of rules about that, and one of them is that they will give meaning to every word in legislation. All I'm pointing out is that when you put words into legislation that say "in the Minister's opinion", you alter the way a judge will read that clause. They will compare old legislation to new legislation and notice that Parliament added those words.

It is as predictable as rain in Vancouver in February that they will determine from Parliament an expressed desire to alter the test from an objective one to one of the minister's subjective opinion. I argue that having one person in Canada, no less than the Minister of Public Safety—not the Minister of Justice but the Minister of Public Safety—make a determination upon where someone is incarcerated or whether a Canadian citizen has the right to come back and serve his or her sentence in a Canadian prison, whether that's desirable or not, is an unwelcome and ill-advised development in our law.

● (1000)

**The Chair:** Mr. MacKenzie.

**Mr. Dave MacKenzie:** Thank you, Mr. Chair.

I'd like to respond to Mr. Davies. First off, he's a bit dangerous when he talks about people not reading all of his amendments. I would suggest to him the same might be true of a budget: that when you decide to vote against a budget before you've read it, it might be a little off.

I would also say that he's absolutely right: I didn't go to law school. But I know that one thing they don't teach you in law school is common sense, and some of this stuff is pure common sense. The courts are frequently able to judge things in a common-sense way.

But I think what you're—

**An hon. member:** Frequently...?

**Mr. Dave MacKenzie:** Well, don't sell the judges short in this country.

What I would like you to do, Mr. Chair, is ask the members, the officials here.... Because I think one thing is that this has got way off base. The coalition members on the opposite side take this as purely a Conservative partisanship thing. I know that when the Liberals were in power, they approved virtually 100% of these applications. But when we start to apply the law as it is written, there will in fact be times when people will take a matter to the court. If you always say "yes", obviously you'll never have a judicial review. So when we started to apply some of these things that were in the legislation.... Now, this is an attempt, I would suggest to you—and the officials can give you a far better view of it—to put into context how Canadian society is best served, taking victims into account.

I haven't heard one word about victims in Canada. It's always about criminals outside Canada who want to come back. This whole thing takes into account the concern of victims and people in this country. But I wonder if the officials.... It's always being put in the context of the minister, but in fact it's broader than the minister. We can't look at this legislation or any legislation as a current minister, a previous minister, or a future minister...it's in the context of the Government of Canada. I'm wondering if the officials could give us a little background to that.

● (1005)

**The Chair:** Okay.

Ms. Campbell, and then we'll come back to Ms. Mendes.

**Ms. Mary Campbell:** I have a couple of points of information. In terms of the judicial reviews to date and where the government or the courts have ruled, I think the figures that we gave at a previous session were that six applications for judicial review were dismissed, which means the government was successful, and in four cases the applications were granted. That was since 2004 in the Federal Court in a total of 10 cases. We just had five decisions yesterday in which two of the applications were dismissed and three of the applications were granted, so it's probably about a 50-50 split.

On the issue of ministerial decision-making, I guess my perspective comes from having done this job since 1985. I've had responsibility for international transfers in the department throughout that time period, so I've seen many, many decisions on or discussions about transfers during those decades.

I think as a public servant I go back to section 6 of the existing act, which states, "The Minister is responsible for the administration of this Act." It is the minister. the minister, of course, is always provided with advice, but I think there's a difference between, if I may, a minister's personal opinions and the minister acting as a minister of the crown.

Without revealing too much—at least prior to publication of the book, there have been occasions when a minister has perhaps expressed more of a personal opinion. I can assure you that officials have the obligation and are very quick to advise the minister about the parameters that surround his or her decision-making. So it's not, if I can just be clear, a minister sitting alone making a personal decision about something. It is a minister operating as a minister of the crown in conformity with the law.

On the addition of the words "in the Minister's opinion", clearly, reasonable people can disagree about the impact of that on the test, but I think it's really to clarify that it is the minister who is responsible for this act. It is the minister who must make the decisions and will be guided by advice. Mr. Laprade has just pointed out a portion of a judgment from yesterday that states, in one particular case, "While the Minister is not bound by his Department's advice, it is incumbent on the Minister to advance his reasons for coming to a different conclusion".

So even if the minister takes a position, which happens occasionally, that is contrary to advice, nonetheless in the ITOA situation the courts have said it must still be reasonable and rational, and conform with the case law. So all I can offer from our perspective is that this was really a clarification. I appreciate the point that, yes, courts do ask why something has changed—there must be a reason. Sometimes the reason is a rather large substantive one. Sometimes the reason is really a clarification, in my experience. I don't know if there's anything else I can offer that would help.

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

We'll move to Ms. Mendes.

[*Translation*]

**Mrs. Alexandra Mendes:** Thank you, Mr. Chairman.

I would like to come back to one of the goals of these amendments to the act, which is to enhance public safety. It seems to me this is a proven fact and not simply wishful thinking on the part of more liberal parties, if you will. Public safety is far better served when you retain the ability to support, supervise and, especially, rehabilitate offenders. We're talking about offenders who committed crimes abroad, not in Canada—obviously. The victims Mr. MacKenzie refers to are not in Canada; they are in other countries. We may well sympathize with the victims, but it's important to remember that our government is responsible for its own citizens, whether they are offenders or not. If we bring them back to Canada when they are still serving a prison sentence, we have an opportunity to rehabilitate and supervise them. If they come to Canada once they've already served their sentence, we no longer have any trace of them. That argument has been made I don't know how many times. So, I really do not see how the amendments proposed by the government will enhance public safety. I just don't get it. On the contrary, they will do away with any opportunity to follow up on offenders who committed offences abroad and then return to Canada.

I'm finished.

● (1010)

[*English*]

**The Vice-Chair (Mr. Mark Holland):** Mr. Kania.

**Mr. Andrew Kania:** Thank you, Mr. Vice-Chair.

I wanted to speak about something Mr. Davies said about Mr. MacKenzie.

I'm actually going to come to your defence a little bit, Mr. MacKenzie, because, although you're not a lawyer, obviously you've had a very distinguished career as a police officer and a police chief. So I have no doubt that you are aware of legal interpretation in construction of the law.

I must say—and I mean this as a compliment to you—that I think you probably have some difficulty championing and carrying some of this legislation forward because of your reasonableness. I think this is one of those pieces of legislation.

As for comments like "nobody's talked about the victims in Canada", well, for these people the victims are abroad. To me, when you say, "victims in Canada", and that we're not considering them... they're not in Canada.

Let's look at the analysis of this legislation. You're taking somebody who's incarcerated abroad and you're seeking to transfer them back to Canada, to a prison. We're not releasing these people onto the street. We're putting them from jail to jail. In terms of a public safety analysis, I truly don't understand what the problem is.

When you talk about the benefits of transferring them here, you have things like their families being able to see them and all of that, which I think helps with the larger goal of trying to rehabilitate these persons. Because, by and large, almost all of these persons will be released into Canadian society at some point in time. So if they're going to be released into Canadian society we need to make sure they get proper rehabilitation, which will not occur in many jurisdictions abroad.

The other point that has been raised numerous times is that of having a criminal record. If they are incarcerated, bear their entire sentence abroad, and have no criminal record when they come back to Canada, we can't control them in any way. It's better, in my view, if these prisoners—unless there's a really strong reason—are brought back to Canada, rehabilitated, and released under our system. They have parole and they are controlled, and we at least then, I believe, are actually protecting Canadians in a responsible manner.

The philosophy of this legislation, to be honest, is that one side of the table wants to keep the people abroad and not bring them home, and this other side of the table believes it's better—with some exceptions, obviously, if there are public safety issues—to bring them home, rehabilitate them, and make sure that we have controls upon them when they're released into society. That's the best way to protect the Canadian public. I think that's the clear philosophical difference.

You're allowed to believe that. We don't believe that, and you know it, but when we look at these various arguments used in support of your position, I don't think they're actually rational, especially when you talk about victims, because the victims are abroad.

Thanks.

**The Chair:** I guess therein lies the debate of what the bill is and whether or not it should be gutted.

We'll move to Mr. Davies, Mr. McColeman, and Mr. Norlock.

**Mr. Don Davies:** Well, I think it's important to shift this debate into what I think we all agree with. I think everybody around this table agrees that we should have an International Transfer of Offenders Act.

I can speak for the New Democrats and say we also agree that when someone been convicted of a crime abroad, there should be a process for determining whether or not they are a suitable candidate to serve their sentence in Canada. In that regard, Mr. MacKenzie said he hadn't heard a word about victims, but I actually have spoken about victims in the debate. Even today, I opened up my comments by saying that proposed paragraph 10(1)(b), which sets forth three different criteria that should be considered when determining whether an applicant should be able to serve their time in Canada, specifically relates to whether or not transferring that person to a Canadian prison would have a dangerous impact on victims.

I think in some cases there could be victims in Canada. Most of the time I think victims would be abroad, but there could be victims in Canada as well, if someone is sentenced abroad. The New Democrats think that is a valid consideration to take into account, and if that person does constitute a threat to the safety of those victims, then on that, I have no problem with the minister turning down that application.

Really, the question before us is one of structure and how we get a fair process to answer that question. I agree with Ms. Campbell and stand corrected that it is the Minister of Public Safety who administers this bill. I respect that, but from a structural point of view it is, in the New Democrats' point of view, neither healthy nor desirable to have power concentrated in one person's subjective opinion.

I want to conclude by saying, again, that the basis of the New Democrats' position is that offenders who represent a threat to the security of Canada or a threat to other Canadian citizens, whether they're in prisons or outside prisons, and whether or not those people have any other factors that are listed in the act that would preclude them from being suitable candidates to serve their time in prison, should be precluded from being transferred. But what we must keep in mind, as I said earlier, is that a person who is convicted of a crime abroad, if they are released from prison, will come back to Canada.

I was moved by the evidence I heard, which was that when this happens, if they've served their time and we don't transfer them to Canada, we run the risk of having them come back into Canada without our knowing that they've actually been convicted abroad. We run the risk of having those people come back into our communities without our having any knowledge or information that they're there. They could be sex offenders. We wouldn't even know that. We also lose the ability to ensure that they have access to rehabilitation programs in prison. Last, we don't have any ability to put them under supervision in the community as part of their sentence.

All of those things add up to one thing: that not transferring offenders in many cases will make our communities less safe and more dangerous places. That's what is fuelling the New Democrats. There is no desire to gut any bill. There's a desire on the New Democrats' part to strengthen public safety, and also to make sure we have a fair, judicious approach that gives the minister the ability to make the appropriate decision, but also makes sure that it's administered in a fair and judicial manner.

The amendments that have been proposed by the government in this respect do two things, in the New Democrats' opinion: they make our communities less safe, and they replace a judicious, fair standard with one that is subjective and concentrates power in the hands of one person.

● (1015)

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

Mr. McColeman.

**Mr. Phil McColeman (Brant, CPC):** Well, I'm not a lawyer, and everybody knows that. I'm a contractor, and it's interesting to me to listen to the debate today and to hear some of the comments, such as the one Mr. Kania made, about the philosophical differences and the fact that we want to just keep convicts in prisons abroad, which is so far from the truth that it's ridiculous to contemplate.

It's interesting to listen to the experts who have come to tell us about the court system that has rendered decisions and about using case law as the guiding principle for the enhancements to the minister's ability to handle all types of situations. Taking partisanship right out of it, we should listen to what that case law is and what those decisions are, because they're done impartially. They're done by judges who are not able—and to my knowledge are not supposed to—to take any particular philosophical ideological point of view, but who are to listen to the evidence and decide whether it's in the best interests of our country to allow someone to come back or not. So we have case law.

As I look at this issue today, I can see that the debate is definitely along ideological partisan lines, perhaps for the purposes of political gain—by the coalition, perhaps—but as I weigh how I will vote on this issue, I'm listening to the people who have had the experience. We have someone at the end of the table who has served since 1985 and knows the decisions that have been made. We just had evidence provided to us of the most recent decisions, those just made: that the impartial courts turned down I think two applications and approved three on judicial review.

So what we're talking about here is not concentrating discretion into one person's hands and having him or her administer: it's giving them the enhanced tools to be able to do their job better. It would be like me, in my business, saying that I'm not going to buy the skillsaw and we're going to let everybody still use the handsaw.

I will be supporting this legislation as written, because I've listened to all sides and everybody has put their partisan spin on this. To me, the case law, the experience, the reasons for wanting this, and the enhancements in order to do a better job as the minister and the ministry, all make good common sense.

● (1020)

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

Mr. Norlock.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you very much.

Well, the person I wanted first off to hear what I had to say is not in the room, but that's okay. We sometimes compliment each other, but those compliments that just came across a few minutes ago from Mr. Kania I believe to be backhanded compliments, and somewhat condescending, although he may not have meant them to be.

I guess I'm sensitive when I hear people saying that it's unfortunate that you're not a lawyer. One of the great things about this Parliament of ours is that it allows people—

**Mr. Don Davies:** Excuse me, Mr. Chairman. I have a point of order.

**The Chair:** Yes.

**Mr. Don Davies:** I'm not sure about this, but I know that in the House it is inappropriate to refer to someone not being present in the House. I don't know whether the rule is the same in a committee—

**Mr. Rick Norlock:** If it is, I apologize.

**Mr. Don Davies:** — but if it is, Mr. Norlock just offended that rule.

**Mr. Rick Norlock:** Well, I apologize for that.

**The Chair:** It doesn't apply here—

**Mr. Don Davies:** It doesn't? Okay.

**The Chair:** —but the point is that he has taken it back.

Go ahead, Mr. Norlock.

**Mr. Rick Norlock:** Anyways.... My train of thought is a little bit broken, but I think we can pick up. One of the good things about the Parliament of this country is that we have an eclectic mix of people from every walk of life, and I think that's the expectation of the founders of democracy.

But it is good that we have a significant number of lawyers, and it is appropriate and I think good that almost always, if not always, the Minister of Justice is a lawyer, and that most often, but not always, the Minister of Public Safety is a lawyer, because they deal in the law. One of the good things is that we have people who are independent of government and who are able to advise us. We have those experts here today. They are the people in whom I think the Canadian people's faith is well placed and whom I think as parliamentarians we often applaud and have just applauded, but we have not necessarily always agreed with the advice. That is our right. That's the way our system is.

I'm going to speak about who the victims are here. I speak to everyday Canadians. I won't go into the specific cases, but they see people who go abroad and commit serious, heinous crimes and then hear that the government is bringing them back to Canada to serve their time. I deal with people who struggle from day to day just to keep a roof over their head. They hear that it costs $100,000 to $120,000 a year to keep somebody in jail and they ask me why we have to pay for these people. They come home because most prisons in foreign countries are terrible places to be. Why do we have to have them come home, these people say, and why do I have to pay for them?

Quite frankly, I use some of the very good arguments that are there. In many cases, it is for rehabilitation. In many cases, it is for this, that, and the other thing. But it really doesn't resonate well with them. That's why I think it's important to allow the Minister of Public Safety, whether he is a Liberal or Conservative—whatever the party is that's in power—to have the ability, under certain constraints, to make those decisions.

Ultimately, and as we have just heard, very often, those decisions are appealed to our courts, and to our highest courts, whose job it is to put politicians in their place—ministers of the crown, if that is the case, and the Minister of Public Safety—and say, “You're wrong”. They'll keep appealing, and then the Supreme Court may say, “No, this person should be brought back to Canada”. And they will be.

I do understand that we should have an obligation to structure, to make sure the law is made in such a way that it best does the things it's supposed to do, so that we don't have to go through the very expensive legal processes that are available to people. I guess I'd just say that we need to be very careful.

We need to also let the Canadian people know that not every single person in a foreign jail wants to come home. I don't have the numbers, but I suspect that before this meeting is over we'll have some numbers. Probably fewer than 50% of Canadians who are incarcerated overseas want to come home. Of those who do want to come home, the Minister of Public Safety said no to probably fewer than 10%, probably fewer than 5%. Because this is a public meeting and hopefully Canadians will be made aware of the various arguments, we have to keep those statistics and those things in mind.

This is a very partisan place. I may get backhanded by some of my own friends here, but this is a very partisan place. Maybe we need to just have another coffee, take another drink of water, truly try to be less suspicious of each other, and just try to do what's right.

Thank you.

● (1025)

**The Chair:** Thank you very much, Mr. Norlock.

Mr. Holland...?

All right. Is there anyone else on this particular amendment brought forward by the NDP?

If not, are we ready for the question? Shall amendment NDP-2 carry?

(Amendment agreed to on division)

**The Chair:** All right. That negates amendment LIB-1.

We'll now proceed to amendment LIB-2.

**Mr. Mark Holland:** It speaks for itself, Mr. Chairman. I think the arguments have been made in prior discussions. I'm not going to reiterate them.

**The Chair:** All right.

Anyone else on LIB-2?

Obviously, if LIB-2 is adopted, NDP-3 will not proceed.

**Mr. Don Davies:** Actually, Mr. Chairman, that's not necessarily the case. They don't do the exact same thing.

**The Chair:** But if LIB-2 is adopted, NDP-3 cannot be moved, according to what the legislative services tell me.

**Mr. Don Davies:** No—

**The Chair:** Do you want to speak to that?

**Mr. Don Davies:** I think I can clear up the confusion. Both LIB-2 and NDP-3 remove “in the Minister's opinion”, but NDP-3 also adds the words “while they are serving their sentence”. I will reconsider my amendment when it happens, but they are not identical.

**The Chair:** Maybe your better option would be to do a subamendment of the Liberal amendment. That's the other option.

**Mr. Don Davies:** It can go either way. It doesn't matter to me. It's six of one and half a dozen of the other.

**The Chair:** All right.

**Mr. Don Davies:** I can do that or else....

**The Chair:** Yes, that may be the best bet.

Mr. Holland would then accept that as a friendly amendment.

● (1030)

**Mr. Don Davies:** Actually, I don't want to move the subamendment yet. I'd like Mr. Holland to—

**The Chair:** He wasn't going to speak to it, I don't think.

**Mr. Don Davies:** Okay.

**Mr. Mark Holland:** I'd be happy to move it myself, if that's helpful, or if Mr. Davies is moving it, whatever works. I'm supportive of it.

**The Chair:** Unless, Mr. Holland, if you wanted to withdraw yours, then.... You have that choice.

**Mr. Mark Holland:** For the purposes of facilitating this, let's just consider it at the table. If we consider it, it's now before us, and then we just can move. I think that's probably the most expeditious course.

**The Chair:** Do I have a mover, then, on the subamendment?

**Mr. Mark Holland:** I'll move it as a subamendment.

**The Chair:** Mr. Holland now has moved the subamendment to add—

Oh, you can't amend your own amendment. That's right.

Can the Liberals...?

**Mr. Don Davies:** Then I'll move it.

**The Chair:** Mr. Davies, then, will move his subamendment to include the words—we have to go over to his NDP-3—"while they're serving their sentence".

Does anyone wish to speak to the subamendment of Mr. Davies?

Madame Mourani.

**Mr. Don Davies:** Should I not speak to it first, just so I can explain what it does?

**The Chair:** You're right. Go ahead.

[*Translation*]

**Mrs. Maria Mourani:** Mr. Chairman, I would just like to raise one point with respect to the amendment.

[*English*]

**The Chair:** But he moved the subamendment.

[*Translation*]

**Mrs. Maria Mourani:** I'm not sure if it's the same as NDP-3. There are sentences missing. All you added was "while they are serving their sentence". But you also have to add "after the transfer".

Mr. Davies, you have to add "after the transfer" to your amendment. If you say "while they are serving their sentence", that could be outside Canada. Your amendment is incomplete. If you wanted to be consistent with NDP-3—

[*English*]

**The Chair:** Basically, Madame Mourani, what the subamendment will do is add a sentence to....

I mean, it's basically the same. It's the same as his whole amendment, because the Liberals have "whether the", and then "the offender's presence in Canada, after the transfer, while they are serving their sentence, will endanger". It adds that to it. So it becomes the same, but they're still using it as a Liberal amendment in his subamendment—

**Mrs. Maria Mourani:** *Non*.

**The Chair:** Continue.

[*Translation*]

**Mrs. Maria Mourani:** Let me explain. What I understood was that Mr. Davies' amendment would only add "while they are serving their sentence". Are you also adding the word "all"?

[*English*]

**The Chair:** No, that's wrong—

**Mrs. Maria Mourani:** Okay.

**The Chair:** —adding all of it. Yes.

More comments...? Where were we?

Mr. Davies?

[*Translation*]

**Mrs. Maria Mourani:** Fine. Thank you.

[*English*]

**Mr. Don Davies:** Thank you. I just wanted to explain my amendment. I'm looking forward to my colleagues' guidance on this.

I'll tell you what my reasoning was. Proposed paragraph 10(1)(b) is a paragraph that, if passed, would require...at the very least it's discretionary. But regardless of how we vote on that, it places the factor of whether an offender's return to Canada will endanger public safety, including the safety of any person who's a victim, the safety of any member of the offender's family—if they've been convicted of an offence against a family member—or the safety of any child in the case of an offender who has been convicted of a sexual offence involving a child....and the New Democrats are in favour of all those considerations.

What we were concerned about here is that if the minister is considering an application, the issue that we had was when is the threat...when is the minister's mind...what is the proper time period that the minister's mind is to be addressed to? If you look down at proposed paragraph (j), it says "the manner in which the offender will be supervised, after the transfer, while they are serving their sentence", so there already are some factors in there that say what you have to think about, which is, if we transfer this person, we want you to think about what the impact will be when they are serving their sentence.

What I was thinking was that this is what you'd be thinking about if we transfer someone who's serving, let's say, a sentence for a sex assault in Minnesota. If we transfer them to Canada, we want to make sure that if we put that person in a Canadian prison they won't present a threat to victims, or to members of their own family, or to children, while they're in prison. The reason that this should be the time period that they address their mind to is because once they get....

If what we're asking the minister to do is to address their mind to whether they'll present a threat after they get out of prison, it seems nonsensical. Because if you don't transfer them and they come across the border from Minnesota after they serve their sentence, they still can present that threat. There's no difference. So what we thought would make the most sense is that we should direct the minister's attention to the time period that they're going to be in prison. Because it makes no difference after they serve their sentence. I'm sorry—I know this is a difficult thing to explain.

We just thought that because the minister is directed, in (j), to consider the effect on a time period while they're serving their sentence, if we don't put that language in up above it, then it would be presumed that the minister would be unclear on whether they are addressing their mind to whether that person presents a threat while they are in prison or after they get out.

Although I'm not opposed to having the minister consider that, I don't understand the impact of that, because if the minister says, "If I transfer that person to Canada, they serve their sentence here, and I think they're going to present a threat to a victim or a child or whatever after they get out of jail, so I'm not going to grant the transfer...". Once again, that's nonsensical. Because if they don't grant the transfer, that person serves their sentence, comes across the border after the sentence, and we have no control over the person.

So I argue, in that case, that it's more important to have the person come to a Canadian prison so that we have a record of that person's conviction, we can make sure they have the appropriate programming in prison, and we can ensure there's the appropriate community supervision of that person after they get out of jail.

I think it's safer if we direct the minister's attention to "while" they're in prison, because I think we want that person to be on record and we want to know who they are, particularly if that person's offence involved a sex crime against a child.

● (1035)

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

Mr. MacKenzie.

**Mr. Dave MacKenzie:** Well, Mr. Chair, Mr. Norlock did raise the issue. Just so everyone understands, when we argue that it would be safer for Canadians to bring all these people back to Canada so that they can then certainly receive treatment here or be watched when they get here and so on.... Just so everybody understands, there are something in excess of 2,000 Canadians—

[*Translation*]

**Mrs. Maria Mourani:** Mr. Chairman—

[*English*]

**The Chair:** Madame Mourani, on a point of order.

[*Translation*]

**Mrs. Maria Mourani:** Mr. Chairman, I wish to raise a point of order.

I'm sorry for interrupting, but I don't want to see the committee waste its time. I have one very important point to raise. Mr. Davies' amendment, in conjunction with Mr. Holland's amendment makes absolutely no sense in French. When you read the French—

[*English*]

**The Chair:** Madame Mourani, that's not necessarily a point of order on what Mr. MacKenzie said. That is more of a debate on the subamendment.

[*Translation*]

**Mrs. Maria Mourani:** Mr. Chairman, it doesn't work because if you leave it as is, we will be debating an amendment that is no good.

If you look at the wording, it will end up being: "[…] the offender's return to Canada […]". That doesn't work. To add "after the transfer", "while they are serving their sentence", "will endanger public safety", just doesn't make a proper sentence in French. It doesn't work.

Mr. Holland should have withdrawn his amendment so that we could debate Mr. Davies' amendment and make a subamendment to deal with the return. What we're adding here is: "the offender's return to Canada, after the transfer, while they are serving their sentence".

**Mrs. Alexandra Mendes:** In fact, it's Mr. Davies' amendment that makes no sense. If we say "the offender's return to Canada after the transfer", it's obvious that he will be scot-free and no one will be the wiser. I think we should leave it the way it is.

**Mrs. Maria Mourani:** There is something about this that just doesn't work.

[*English*]

**The Chair:** Yes, but Madame—

**Mrs. Alexandra Mendes:** We're doing the semantics here, okay?

**The Chair:** Except that it's not a point of order, it's a point of debate.

**Mrs. Alexandra Mendes:** No, it's a question of grammar.

**The Chair:** This is to the amendment, not to the bill. You can't go back to the original bill.

It's a question of grammar? Well, we'll—

**Mr. Rick Norlock:** On a point of order, Mr. Chair. Mr. MacKenzie was speaking. Then Madame Mourani made a point of order, totally—

**The Chair:** Yes, but it's not a point of order—

**Mr. Rick Norlock:** But just a moment, Mr. Chair, with all due respect. You began to.... If it's not a point of order, Mr. MacKenzie, who was speaking, is left in limbo—

**The Chair:** No.

**Mr. Rick Norlock:** —while other discussions are taking place, the mikes are not on, and you're told, "Well, just go ahead with your meeting, and we'll clear this up".

● (1040)

**The Chair:** Nobody has said to just go ahead with their meeting, Mr. Norlock. Rather, I ruled that it was not a point of order.

I was listening to Madame Mourani to see if her point was a point of order on something Mr. MacKenzie had done or something that she felt was a technical point of order on the subamendment. Madame Mendes is trying her best to clarify to Madame Mourani so that Madame Mourani can understand the subamendment.

Mr. MacKenzie, you may continue.

**Mr. Dave MacKenzie:** I'm not sure if I can go right back to where I was.

**The Chair:** Well, I'll give you extra time.

**Mr. Dave MacKenzie:** Just so there's a broader understanding, I think this goes to Mr. Davies' point, and we well understand what he's talking about. At any given time, something in excess of 2,000 Canadians are incarcerated in prisons outside of Canada. The history is that something like 100 of them apply per year to come back to Canada, so on average there are 1,900—plus or minus—Canadians who complete their sentences in other jurisdictions without ever applying to come back here.

The argument is that we are better off to know about these. The other side of that argument would be that there are 1,900 we don't know about. We should pass legislation that everybody has to come back here, and I don't think anyone is in favour of that.

I just think that's a non-starter to this discussion, the fact that some of them do come back. Certainly, of the ones who do come back, they apply to come back. The vast majority have been granted approval to come back. It's a pretty high percentage that are granted approval to come back here. We shouldn't be talking about the very few that—

**An hon. member:** [*Inaudible—Editor*]

**The Chair:** Order.

Go ahead, Mr. MacKenzie.

**Mr. Dave MacKenzie:** We shouldn't be only focused on the very few who have been turned down, which is minimal.

But again, I'm wondering.... We have the non-partisan officials here. Could they tell us what these amendments would in fact mean to the practical application of the legislation?

**The Chair:** Madam Campbell.

**Ms. Mary Campbell:** Yes. On the statistical issue, Mr. Churney and Ms. Keryluk advise that Mr. MacKenzie's numbers are roughly the correct proportion in terms of our best estimate of the number of Canadians incarcerated abroad, because of course some Canadians don't make themselves known to officials. We have no way of finding out.

On the issue of the amendment about the test being while they are serving their sentence, the only thing I can offer there is that it is consistent with the Parole Board decision-making, for example. The law there specifically says that your judgment about the dangerousness does fall within a certain parameter. It's not an expectation to make a judgment about dangerousness far into the future. I think that's all I could say about that.

**The Chair:** Thanks, Mr. MacKenzie.

**Mr. Dave MacKenzie:** There's just one other part of this. Canadians who hold dual citizenship are considered Canadian for this purpose. There may be people incarcerated in a country that is actually either their country of their choice or their homeland; they've gone there and committed offences. We have to be very clear that these aren't necessarily people who only hold Canadian citizenship or who are Canadian citizens; they may very well have dual citizenship.

**The Chair:** Ms. Campbell, is that indeed the case, as Mr. MacKenzie has just said? With dual citizenship, does Canadian citizenship take priority in this legislation?

**Ms. Mary Campbell:** That has not been my experience. We do have a few cases annually of people with dual citizenship. It's a fairly small number. We look at the facts of the case. If they have dual citizenship, we look at where their ties are strongest, perhaps, as opposed to one citizenship trumping another. That has not been our experience in how we analyze those situations.

**The Chair:** Mr. Davies.

**Mr. Don Davies:** I think I understand Madame Mourani's difficulty with this. I think she's right. I think I can clear this up. The problem with the amendment as we've drafted it is that there is a built-in redundancy. It's because we took language from proposed paragraph 10(1)(j) and put it in proposed paragraph 10(1)(b), which already has the phrase “return to Canada”.

My amendment says: “whether the offender's presence in Canada, after the transfer, while they're serving their sentence”. There is a redundancy. I think all we need to say to properly consider this amendment is that in proposed paragraph 10(1)(b) we would say: “whether, in the Minister's opinion, the offender's return to Canada, while they are serving their sentence”.

**An hon. member:** [*Inaudible—Editor*]

**Mr. Don Davies:** Yes. Take out—

● (1045)

**The Chair:** We would take out “after the transfer”?

**Mr. Don Davies:** Yes: “offender's return to Canada, while they are serving their sentence...”. Because what I wanted to get at was to recommend “while they're serving their sentence”. I think that should be reflected in French and English, and then....

I thank Madame Mourani and Madame Mendes for that.

**The Chair:** I'm going to have our analyst read this out and see if that's indeed what we're doing, because we're now doing a subamendment to a subamendment, and it's getting a little convoluted.

Madame Mourani, thank you very much for bringing that up.

Go ahead, sir.

**Mr. Mike MacPherson (Procedural Clerk):** Basically, what we started with was just “whether the”. What we're going to be doing with the subamendment is that instead of just replacing line one, we're actually going to be replacing lines one and two. It will read: “whether the offender's return to Canada while they are serving their sentence will endanger”.

[*Translation*]

And the French is: "*le fait que le retour au Canada du délinquant pendant qu'il purge sa peine*".

**Mrs. Maria Mourani:** Okay, but the translation I was given from English to French included the word "presence", not "return".

**Mr. Mike MacPherson:** No, it's "return" now.

**Mrs. Maria Mourani:** But is it also "return" in English?

**Mr. Mike MacPherson:** Yes.

**Mrs. Maria Mourani:** I see. That is not what I heard here.

[*English*]

**The Chair:** It's what we have written down here. Sometimes the interpretation is not what's in the text here, with all due respect to our great translators.

Now we have to vote on the subamendment...as amended?

**Mrs. Alexandra Mendes:** Can I just draw it to your attention that I had put myself on the list?

**The Chair:** Oh, yes. I still have Madame Mendes, Madame Mourani, and Monsieur Godin.

Madame Mendes, you are first.

[*Translation*]

**Mrs. Alexandra Mendes:** Mr. Chairman, I'd like to come back to the dual citizenship issue. I say that the citizenship at birth prevails when an offence is committed in the country of origin. It's clear that if you were born a Colombian, you acquire Canadian nationality and then commit an offence in France, your Canadian nationality may be the one that will be deemed to take precedence. However, if you commit an offence in Columbia, it is your Colombian citizenship—your nationality at birth—that will take precedence.

[*English*]

I'm sorry, but this is a fact of law. If you commit a crime in your country of birth and you still hold citizenship, that's the citizenship that will be used, and you won't be able to claim Canadian citizenship because the prisons are better here.

**The Chair:** Thank you, Madame Mendes.

Madame Mourani.

[*Translation*]

**Mrs. Maria Mourani:** Thank you, Mr. Chairman.

I also felt a little concerned about the whole issue of dual citizenship. Like Ms. Mendes, I have had a huge number of cases involving people with dual citizenship.

Let me finish, Mr. Chairman.

[*English*]

**The Chair:** This is not specific to the subamendment. We want to keep the debate on the subamendment. We're getting way off. Go ahead, very quickly.

[*Translation*]

**Mrs. Maria Mourani:** As I was saying with respect to dual citizenship, I would like to be given specific cases where Canadian citizenship took precedence. When an offence is committed in the person's country of origin and, I could go even further and say, even if no offence is committed—here I'm referring to cases involving divorce or relations between the husband and wife—again it's the man who holds the dominant position in certain countries. Women can end up having their children taken away from them. This doesn't even have to do with actual offences; it has to do with civil rights. It's fundamental. Canadian citizens with dual citizenship are currently second-class citizens. They don't have the same rights as citizens born in Canada with a single citizenship.

Furthermore, children born in Canada of parents of a different origin may experience the same thing in their country of origin. This is serious, Mr. Chairman—very serious. I believe Canada has a duty to protect all its citizens, whether they are born in Canada, have another origin, or whether they came here from another country and were not born in Canada. Citizenship must be the same for everyone. There are no half-citizens.

● (1050)

[*English*]

**The Chair:** Thank you, Madame Mourani.

I'm going to go to Mr. Norlock and then Mr. Davies to conclude.

**Mr. Rick Norlock:** I value very much the opinion of the folks from Public Safety. I can remember having a discussion with more than one minister. It had to do with citizenship. I was told outright that there are not two classes of Canadian citizen: there is only a Canadian citizen.

So if you hold citizenship in the Dominion of Canada, you are a Canadian citizen, with all the rights and privileges that come with that, neither more nor less. Would I be correct in your collective opinion or, if you like, in your personal opinion?

**Ms. Mary Campbell:** I can only speak from our experience in administering this act. If a person has dual citizenship, neither citizenship trumps the other. It is a question of analyzing the person's background in terms of where they have the most personal contacts or have lived most of their life. I have seen a Canadian who committed a crime in Canada, and who also had British citizenship, being transferred to the U.K. I have seen a Canadian who also had citizenship in an eastern European country, and who committed a crime in eastern Europe, becoming eligible for a transfer to Canada.

I'm speaking only of eligibility for transfer in that limited context. There's no exclusion of one citizenship for a person who has dual citizenship. If a person has Canadian citizenship, is living, for example, in the U.S., has committed a crime in the U.S., and wants to come back to Canada without ever having lived in Canada beyond his infant days, the act compels the minister to look at whether he has any real connection to Canada. It's not a question of citizenship. Their citizenship would allow them to be transferred here, but practically speaking, the question is whether they have a substantial connection to this country.

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

We'll hear from Mr. Davies and then we'll conclude unless there's somebody else that comes up. I'm reminded that debate on these amendments are unending. I cannot cut off the debate, but I can question relevance. I'm giving you a fair latitude in what we discuss on some of these issues, but I'll try to monitor that as well.

That's not a shot across the bow, Mr. Davies, because it's your turn to speak. Certainly that would never be the case.

**Mr. Don Davies:** In deference to those words of wisdom, I just move the question.

**The Chair:** All right. Are we ready for the question on the subamendment as has already been read to you?

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

**The Chair:** Are you ready for the question on the amendment as amended?

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

**The Chair:** Those are completed.

We will now move to NDP-4, Mr. Davies. This is identical to LIB-3. If NDP-4 is disposed of, LIB-3 cannot be moved.

**Mr. Don Davies:** Mr. Chairman, again, to speed this up, I'll say that I've already talked about this. ONce again, it simply removes "in the Minister's opinion". I would urge the committee to support this for the same reason that has already been expressed very well by members on this side of the table.

● (1055)

**The Chair:** All right.

Is there further debate on NDP-4? If not, are we ready for the question?

**An hon. member:** Yes.

(Amendment agreed to on division)

**The Chair:** All right. We'll go to NDP-5.

Mr. Davies, did you want to speak to NDP-5?

**Mr. Don Davies:** Briefly, again, this is similar to the amendment that preceded the last one, which adds the words "after the transfer, while they are serving their sentence". Again, at present, the proposed paragraph would suggest that when an application is received, the minister must consider whether the offender is likely to continue to engage in criminal activity after the transfer. Again, we want to direct the minister's mind to the time period of while they're serving their sentence.

Again, for reasons similar to those I've expressed before, if we think a person is going to come back to a Canadian prison and continue criminal activity in prison—it could be drug trafficking, drug use, violence against other inmates, or sexual assault—that's a valid reason not to approve the transfer. But if we think this person is going to engage in criminal activity after they've finished their sentence, once again I would argue that it is better for community safety for us to approve that transfer, because we want to know.

If we think a person's going to engage in criminal activity after they come back to Canada, it's far better for us to know that and to transfer them so that we know of their record, we can at least try to get them into programs in our prisons, and most importantly, we can put them under community supervision for at least a portion of their sentence or at least have an opportunity to put them under supervision while they're serving their sentence.

If we leave it the way it is and deny the transfer because the minister thinks the person will engage in criminal activity after they serve their sentence, then we're again letting someone come back into Canada whose record we may not know about. They'll be re-entering our communities, where the police and the community will not know that they have a criminal record, the organizations they apply to work at won't know, and a search may not reveal that. Also, there would be no opportunity for community supervision.

I argue for community safety. It's important that we focus the minister's mind, as we have done in proposed paragraph 10(1)(j), as the government has recognized, so that we focus our mind on when that person is serving their sentence.

**The Chair:** Mr. Rathgeber, and then Madame Mendes.

**Mr. Brent Rathgeber:** I had a question, but I think Mr. Davies has answered it.

**The Chair:** Thank you.

Madame Mendes.

[*Translation*]

**Mrs. Alexandra Mendes:** Mr. Chairman, I have another grammatical issue to raise. I don't understand what the word "*les*" is replacing in the French version. Perhaps someone could explain.

**Mrs. Maria Mourani:** Those are the last three letters of the word "*criminelles*".

**Mrs. Alexandra Mendes:** In the bill, it says "*criminelles*" in the feminine.

**Mrs. Maria Mourani:** Yes, it's wrong.

[*English*]

**The Chair:** It's added on to the wording of the existing bill, which makes it "*criminelles*", plural. So in the act, is it in the singular and then this would turn it into the plural...?

Oh, it's a continuation of the word from the line before.

Is there any other debate?

Mr. MacKenzie.

**Mr. Dave MacKenzie:** Thank you, Chair.

I just wonder, again...I keep going back to the non-partisan officials. Could they give us an interpretation of what that might mean to the application of the act?

**Ms. Mary Campbell:** I think it's really similar to the previous amendment that placed temporal parameters around the estimation of the criminal activity. All I can say again is that it would be consistent with parole decision-making, which places a temporal constraint around the time period.

**The Chair:** All right.

Are we ready for the question on amendment NDP-5?

(Amendment agreed to on division)

**The Chair:** Amendment NDP-6 is identical to LIB-4. If NDP-6 is disposed of, LIB-4 cannot be moved. All in favour of NDP-6?

(Amendment agreed to on division)

**The Chair:** All right. That gets rid of amendment LIB-4. I just like anything that gets rid of Liberal anything.

**Some hon. members:** Oh, oh!

**The Chair:** Now we move to amendment NDP-7.

Mr. Davies.

● (1100)

**Mr. Don Davies:** It's the same one, Mr. Chairman.

**The Chair:** I'm giving him the opportunity. I never want to diminish the opportunity Mr. Davies has to speak in this committee.

**Mr. Don Davies:** I appreciate that so much, Mr. Chairman.

**The Chair:** Madame Mourani, did you want to speak to this?

**Mrs. Maria Mourani:** No, it's the same vote.

**The Chair:** *Oui*. I gotcha.

Is there any debate on amendment NDP-7?

(Amendment agreed to on division)

[*Translation*]

**Mrs. Maria Mourani:** Mr. Chairman, I would like to make an amendment.

[*English*]

Mr. President, *Monsieur le Speaker*....

**The Chair:** Just one moment, please, until we get our paperwork in order here.

Madame Mourani has an amendment that she would like to move at this stage. It's not in your package.

[*Translation*]

**Mrs. Maria Mourani:** Thank you, Mr. Chairman.

My amendment is actually very simple. It is to delete paragraph 10 (1)(h), which reads as follows:

> (h) whether the offender has refused to participate in a rehabilitation or reintegration program;

Can I give my rationale?

[*English*]

**The Chair:** Madame Mourani, do you have your amendment in writing? We need it in writing for our analysts.

So it's the removal of proposed paragraph 10(1)(h) from clause 3...?

[*Translation*]

**Mrs. Maria Mourani:** Yes, that's it.

[*English*]

**The Chair:** All right. Continue.

[*Translation*]

**Mrs. Maria Mourani:** The amendment is simply to delete proposed paragraph 10(1)(h). Actually, this is somewhat along the same lines as paragraph (i) that my colleagues will be moving an amendment to delete subsequently.

Allow me to explain. If a person is innocent, as you know, in some countries, the justice system, whether we like it or not, is somewhat deficient and even corrupt. I won't name any specific countries, but there are some legal systems where you never actually see a judge. What I mean is that we are not all the same around the world. Legal systems are not all the same, not always fair. Corruption can also become embedded in such systems.

When someone says they're innocent, that their trial wasn't fair but is nonetheless charged and convicted, and then refuses to acknowledge guilt or participate in programs—because they're innocent—are we going to prevent such individuals from being transferred, supposedly because they refused to participate in programs? That makes no sense in the context of risk analysis. Let's not forget that we're transferring an inmate from one institution to another; we're not transferring that person to the outside. That is my first point.

Also, Mr. Chairman, it's important to remember that laws are there to protect society. If those laws are discriminatory or improper, to the point where innocent people are put in jail, that's unacceptable. We must do everything we can to ensure that laws are as fair as possible. That is our role. That was my first point: innocence.

My second point is as follows. As you know, when an inmate is not transferred, for all kinds of reasons—and a number of witnesses made this point—we end up with individuals who have been convicted, have completed their sentence, have no interest in programs, are dangerous criminals but are not transferred back to Canada. The consequence of that is that we know absolutely nothing about these people. We have no control over them. It is to our advantage to transfer them, in order to be able to monitor them inside the institution. If some are not interested in participating in programs, we have legislation—the Corrections and Conditional Release Act—which already sets certain criteria. If an inmate refuses to participate in programs, too bad for him; he will simply have to "do his time" and stay in as long as possible. They can even be kept in jail. As you know, the provision that allows for an inmate to be kept in prison means that a dangerous offender who wants nothing to do with prison programs will simply serve his time right until the end.

So, strategically, is it better to leave a dangerous offender in prison abroad, in a country where, once he has completed his sentence, he will be back on the streets and may return Canada with no criminal record, as though nothing had happened; or, is it in our interests to have that person under our control, in prison? When the inmate gets out of prison, we can continue to monitor him by other means, such as probation and, if memory serves me, section 810, which refers to a recognizance to keep the peace, and so on.

On the one hand, it is beneficial for us to be able to monitor these dangerous offenders. On the other hand, we should not be passing a bill that will penalize innocent people. For obvious reasons, considering the fact that an offender may or may not have refused to participate in a rehabilitation program is not a meaningful criterion to apply to a transfer—all the more because some countries do not offer rehabilitation programs, and actually offer absolutely nothing, except perhaps a little torture here and there, if you see what I mean. It simply isn't true that correctional systems around the world are all the same, and the same applies to legal systems.

My final comment is that, if we want to be logical, we should remove proposed paragraph 10(1)(h). You will see that the other amendments to be moved by my colleagues will be based on the same philosophy—namely, culpability.

Thank you, Mr. Chairman.

● (1105)

[*English*]

**The Chair:** Thank you very much.

Mr. MacKenzie.

**Mr. Dave MacKenzie:** Mr. Chair, as a point of order, I would go back to my original argument that these kinds of things are outside of the scope of the committee. This takes away the intent of the bill, which was to give some guidance to the minister and to the officials who make these decisions.

When we start to scope out.... To take out things that the bill clearly intended as issues that the minister and the officials who advise him would look at, that's aside from the argument of whether or not it even makes sense in regard to what Ms. Mourani said. When you start to remove complete sections from the bill, I do believe that is outside the scope of this committee to start to do that kind of thing. I'd like a ruling from the chair on it.

**The Chair:** Well, again, I guess you can challenge the chair on it. I've seen a clause-by-clause done whereby the whole bill was basically struck down and reported back and that's been ruled in.

There are times when it may change. Or it may not change. When you take a look at what the bill was, there is still a substantive amount that isn't even being amended compared to what's being brought forward. So on that basis, the spirit of changing one or two clauses or this.... I guess that's up to the committee to decide.

I have to rule that the presentation of the amendment is in order. You can challenge the chair on that if you wish, to be on record. I am told from the table that they are in order. In my experience, I have seen much more of a bill being taken away, or changed, or diminished, and it has been ruled in order. As much as we may like or dislike, or we may report back to Parliament on how it's been gutted...that would be up to somebody to do it. But as far as whether or not we should even deal with those goes....

I'd just like to say one other thing too. There is a problem here. The problem is that you discuss and deal with a bill three months before you move to clause-by-clause. So a lot of these very issues weren't brought out last week, and they weren't brought out three weeks ago. They were brought out the last time we discussed this bill; I don't have that date with me, but it has to have been November, or maybe even October.

So again, this is one of the reasons why we've had this discussion before. We deal with legislation and move it to clause-by-clause, and then we report back or we don't report back. But waiting three months and then re-debating.... Many of the debates we've had here today at the clause-by-clause stage are identical to the debates we had way back in October when we dealt with this.

That's just to make the point that, again, a lot of this legislation is being stalled and we aren't moving to clause-by-clause. And when do we come to it, it is being substantively changed—correct—but it's still in order.

Mr. MacKenzie.

● (1110)

**Mr. Dave MacKenzie:** Mr. Chair, I won't challenge you because I know the numbers that are sitting at the table, and that would be fruitless, but I would like to address some of the comments made by Ms. Mourani.

If we took her argument to its extent, we would bring everybody back, whether they applied or not, so that they would get the benefits here. But if they're not going to accept rehabilitation, treatment, and whatever may be required where they are, why would we expect that if we brought them back here they'd receive the benefits in Canada? We don't re-judge the case. We don't say, “Well, because we think you were mistreated or because you were wrongly convicted, we'll overturn the conviction”. That's not what happens with this process.

One of the criteria that surely Canadians would expect is that if we're going to bring back a percentage of Canadians who are incarcerated abroad, then they will have accepted treatment in other places. It's not the only criterion, but it is one of the criteria that the officials would look at, I'm sure, when they would make their recommendations to the minister.

We can talk about the totalitarian regimes in other countries, but there are many democratically elected regimes in countries around the world where these folks are applying, such as Great Britain, the United States, and others. So we shouldn't say that's not a consideration; in fact, that should be one of the considerations.

If you're going to use the argument that they come back to Canada for rehabilitation and treatment, it's pretty tough to say to Canadians that we're not going to take into account the fact that they've refused those treatments in other communities before they're brought back here. Everyone who is incarcerated in another country has been in that situation of incarceration for a while. They were just sentenced yesterday and then applied to come back.... They have to serve a portion of their sentence. So if treatment is part of the situation in that country, surely we should consider that when we say whether or not we want to tell those folks to come back to Canada.

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

Seeing no other hands in the air, all in favour of Madame Mourani's amendment? That amendment would say that Bill C-5 be amended by deleting lines 30 to 32 on page 2, which is, I believe, paragraph (h).

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

**The Chair:** That will be included as a Bloc amendment.

Now we'll proceed to amendment NDP-8.

Mr. Hyer.

**Mr. Bruce Hyer (Thunder Bay—Superior North, NDP):** Thank you, Mr. Chair.

It is clear to me, although I'm new to this process, that the most glaring abuse of this clause might be, from time to time, that if someone is innocent, declares his or her innocence, and continues to declare that innocence, it could cause that person to be considered as in violation of this clause. I support the amendment to kill this clause.

**The Chair:** All right.

It is to kill the clause or amend it by deleting lines 33 to 37? Is that the complete clause?

**A voice:** No. It's just a section.

**The Chair:** Okay. These lines read: “whether the offender has accepted responsibility for the offence for which they have been convicted, including by acknowledging the harm done to victims and to the community”. Your motion is to delete that. It's proposed paragraph 10(1)(i) in clause 3 of the bill.

Mr. Rathgeber.

● (1115)

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

I suspect this amendment will carry, similar to all the rest of them, but I'd just like to point out, for the benefit of the committee and anybody who might be following this debate, that by killing proposed paragraph 10(1)(i) we'll be deleting any reference to the word “victims” in this legislation.

Thank you, Mr. Chair.

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

Is there anyone else on amendment NDP-8? Are we ready for the question?

(Amendment agreed to on division)

**The Chair:** Amendment NDP-8 now has deleted lines 33 to 37 on page 3.

Amendment NDP-9 deletes lines 41 to 43.

Mr. Hyer.

**Mr. Bruce Hyer:** It's also clear to me that neither Canada nor the minister is in a position to assess objectively whether the offender did or did not cooperate in a reasonable manner with the law enforcement officer. I support the deletion of proposed paragraph 10 (1)(k).

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

Mr. MacKenzie.

**Mr. Dave MacKenzie:** I'd just suggest to Mr. Hyer that, yes, in fact, Canada does have the ability to determine that. One of the things that occurs is an exchange of information between the country in which the person is held and Canada. The officials cannot make any recommendations to the minister if they don't have information at hand on what transpired while the individual was incarcerated in another country. It is a pretty simple situation, in that the officials, in fact, who provide that advice to the minister, do have access to that kind of information.

Your reason for removing it doesn't really seem to make sense to me. Again, it's a case of your trying to destroy the bill by taking away these issues that any minister, through his officials, would have to make some valid comments or decisions on.

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

Is there any other discussion on amendment NDP-9?

(Amendment negatived)

**The Chair:** NDP-9 is defeated. Now we'll go to amendment NDP-10, which is that Bill C-5, in clause 3, be amended by deleting lines 44 to 45.

That has not been done yet, right?

Mr. Hyer, it's been discussed already, before your attendance here.

Is there anyone else on amendment NDP-9?

Mr. MacKenzie.

**Mr. Dave MacKenzie:** Going back to our original discussions—

**The Chair:** I'm sorry. It's NDP-10.

**Mr. Dave MacKenzie:** And is it the same as LIB-6?

I think it's the same thing, Mr. Chair. With regard to any other relevant factor, again, the minister would have to expand on what the factors were, as would the officials who make those recommendations to the minister. They would have some basis on which there would be other relevant factors, and we sit here today, I'm not sure if we know going forward what those would be, to list them, but they may be, in many respects, things that we haven't considered.

Sometimes my friends opposite talk about “no victims in Canada” if the offence happened in another country. Well, that's not really true. I know that the officials and many others know of situations... and one in particular, where there weren't deemed to be victims in Canada because the offence occurred in a foreign country. The individual came back here and there were victims in Canada, but charges hadn't been laid in respect to what the individual wanted to come back here for.

Those are the other relevant factors, or factors amongst some of them that should be considered. It's no different, with all due respect, in regard to individuals convicted of pedophilia in other countries. Although they may be convicted there and charges may not have been laid in Canada, there are many victims in Canada as a result of convictions for pedophilia offences that have occurred in Thailand, or the United States, or Great Britain.

I can understand what they were thinking when they suggested we take that out, but there are other factors that should really be taken into account. I think that, by and large, if my colleagues on the opposite side thought about it deeply, they would also look at it and say, “There may be factors that we haven't thought of that the officials would consider”.

They could consider them. It doesn't mean that they would then suggest to the minister that the individual not be transferred back to Canada, but at least they could address those issues in their comments to the minister. The minister could very well look at them and say: “I agree that it's appropriate. You've considered them. I also agree that they're not a factor that is going to change my decision on the individual coming back, based on the information you provided.” But to take it out, I think it creates something far more concrete—and maybe even a ruling against somebody coming back.

But more importantly, it's a protection for victims who are in Canada and may not be victims of that particular crime. The pedophilia one is one that certainly comes to mind, I think for all of us, because it is such an international issue, with Canadians being sex tourists around the world. But we also know that we have Canadians incarcerated for it, as we have individuals from other countries incarcerated for pedophilia here. The victims aren't only in Canada; they aren't only in one country.

I think it's one of those things...if we're going to argue strongly about one thing, it's that one there that should remain in the bill for the purpose of giving the officials the opportunity to make those comments to the minister.

● (1120)

**The Chair:** Thank you very much, Mr. MacKenzie. Anyone else on that issue?

If not, are we ready for the question on amendment NDP-10?

(Amendment agreed to on division)

**The Chair:** All right. So LIB-6 cannot be moved. That moves us down to the end of clause 3.

Shall clause 3 carry as amended?

(Clause 3 as amended agreed to on division—[See *Minutes of Proceedings*])

**The Chair:** On clause 4, no amendments have been brought forward. Shall Clause 4 carry?

(Clause 4 agreed to)

**The Chair:** We'll move back to clause 1. Clause 1 is the short title.

Shall clause 1 carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill as amended carry?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall I report the bill as amended to the House?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall the committee order a reprint of this bill as amended?

**Some hon. members:** Agreed.

**The Chair:** That brings this to a conclusion.

Thank you for your attendance.

I want to thank our department for being here: Ms. Campbell, director general of the Corrections and Criminal Justice Directorate; Daryl Churney, acting director of the Corrections Policy Division; Liliane Keryluk, senior policy analyst from the Corrections Policy Division; and Michel Laprade, senior counsel from the Correctional Service of Canada.

Thank you very much.

Thanks to all the members for your work today.

The meeting is adjourned.

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