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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (0845)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning. We will convene the meeting.

This is the Standing Committee on Citizenship and Immigration, meeting number 44, on Thursday, May 10, 2012. This meeting is televised.

The orders of the day, pursuant to the order of reference of Monday, April 23, 2012, are Bill C-31, An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act.

We voted on clause 19 as amended, so we will proceed with clause 20.

Shall clauses 20, 21, and 22 carry?

Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): I would like to speak to those.

The Chair: You want to speak to those? Which one?

Mr. Kevin Lamoureux: Clause 20, if I may, Mr. Chair.

The Chair: Okay, sir, go ahead.

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

I'm not too sure if I have the ability, but if I could, I would suggest that we delete clause 20.

The Chair: [*Inaudible—Editor*]

Mr. Kevin Lamoureux: No, I don't. I don't have the actual motion, but I would suggest that the committee could always talk about it, and then if the government side sees the merit they might want to consider looking at deleting clause 20.

The reason for this, Mr. Chair, is that the change from "reasonably practical" to "as soon as possible"—and that's really what's happening in clause 20 when it comes to Canada Border Services deporting someone—has a fairly significant impact. I suspect that maybe the government, through oversight—I'm not really sure—has put in this change.

When we say "reasonably practical", there are many situations that might arise when someone who's facing a deportation—an emergency situation such as a medical condition, something on humanitarian or compassionate grounds that might allow for the person to stay for an extra day or two. What we're doing by making this change in clause 20 is we're taking away discretion from our Canada border security people, and they've used good discretion in the past.

We do believe it is quite problematic. I'm not too sure to what degree the government is aware of it. Maybe I would look to Mr. Dykstra to see if he might want to provide some comment, or possibly even to legal counsel. Why is it that when it comes to deportation we're taking the discretion away from our civil service that would enable them to recognize emergency situations, so that they could in fact allow an individual to stay an extra day or two if an emergency were to happen, as opposed to saying to a border officer in regard to deportation that it is "reasonably practical" for that person to be leaving tomorrow, or there's a good reason for the person to stay the extra day versus what we're saying, "as soon as possible"? I think changing the words will have a significant impact.

I don't know if Mr. Dykstra would like to provide comment on it. I raise it only because I think it would be a mistake for us to incorporate that specific change.

● (0850)

The Chair: Yes.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Chair.

I wouldn't mind getting a legal perspective on this. Mr. Lamoureux has articulated a point that does have a legal connotation, so I'd like to refer to Ms. Irish to respond.

Ms. Jennifer Irish (Director, Asylum Policy and Programs, Department of Citizenship and Immigration): I'll refer that to our legal counsel, Matthew Oommen.

Mr. Matthew Oommen (Senior Counsel, Legal Services, Department of Citizenship and Immigration): As the honourable member indicated, there is something of a shift intended behind the change in the statutory provision. The provision was always intended to confer a very limited discretion on a removals officer to defer enforcement of the removal order, for example, in emergency situations. The difficulty we've encountered is that the Federal Court, in interpreting that provision, has significantly expanded the ambit of that jurisdiction. The intent of the amendment is to indicate that in fact the jurisdiction is rather limited, as the Federal Court of Appeal has repeatedly upheld. Basically, it's to send that signal. Where there are logistical impediments to removing someone, for example a medical emergency, the removals officer will retain the discretion to defer enforcement of the removal order. But it is intended to signal that the provision confers a very limited jurisdiction on the removals officer, as was always the intent of that provision.

Mr. Kevin Lamoureux: Mr. Chair, the concern again is that whether it was intentional or unintentional in terms of the severity, the concern has to be that when you put in "as soon as possible", it doesn't leave very much leeway either way, and it's a fairly strong message.

I wonder if there's a way it could be softened, at least to a certain degree, so that if there is a medical emergency—if an individual is having issues with their appendix—you don't want to put that person on a plane. Some might interpret it as there not being any choice. I could see it being somewhat problematic going forward, which could cause embarrassment for government and the bureaucracy as a whole.

The Chair: Mr. Lamoureux, the issue you have raised may be an issue of policy. The department is here to answer questions requiring explanations, legal comments, but I wonder if you're getting into an area of policy that someone else should answer—

Mr. Kevin Lamoureux: It certainly is possible. Mr. Chair, maybe if—

The Chair: Maybe Mr. Dykstra, as opposed to Mr. Oommen.... I simply don't think it's fair to ask the department questions of policy.

Mr. Kevin Lamoureux: Then maybe I would look to Mr. Oommen to provide....

Is there another option to "as soon as possible" that you feel would allow for that discretion, not being quite as specific as the legislation is today?

The Chair: Well, you know—

Mr. Kevin Lamoureux: I guess that's policy.

The Chair: Mr. Dykstra, would you help me here?

Mr. Rick Dykstra: Sure. I'm always here to help you, Chair.

I understand what Mr. Lamoureux is doing. I appreciate Mr. Oommen's description. That was a very clear indication of the difficulties we've faced, from a legal perspective, and how we're trying to address it.

I would actually argue a little bit differently from Mr. Lamoureux, in that "the order must be enforced as soon as possible" leaves a great deal of discretion in terms of dealing with issues such as the medical issue you outlined. I think that is a good example.

Certainly, with respect to a removal order and a serious and significant medical condition standing in the way of someone flying, it allows authorities to be able to at least get that person the treatment and medical help needed in order, obviously, to survive whatever that serious condition might be. It does leave some discretion for the individual making the decision. I think it could have been a lot more finite in terms of actually being a lot more specific than "as soon as possible".

A lot of us in our daily lives use ASAP as a way of describing what we need to get. But we're not laying down the law with anyone; we're only suggesting that the request is to be done as quickly as possible. The fact that we actually use that type of language within the bill itself I think suggests there is a little bit of room for officials to make the appropriate decisions.

(Clauses 20 to 22 inclusive agreed to on division)

(On clause 23)

● (0855)

The Chair: We are now on clause 23 and Liberal amendment 12.

Mr. Lamoureux.

Mr. Kevin Lamoureux: I believe we're withdrawing that one, Mr. Chair. We're withdrawing Liberal amendment 12 and Liberal amendment 12.1.

The Chair: Liberal amendment 13, Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I would move that Bill C-31 in clause 23 be amended by replacing line 31 on page 12 with the following:

and who is 18 years of age or older on the day

To briefly explain, Mr. Chairperson, it's in recognition that the bill tends to identify minor age at 16 years, and we're suggesting that it be 18 years. This is an amendment you'll see...there are actually several amendments that deal with increasing the age from 16 years to 18 years.

I'm not too sure where the government stands on that particular issue. I do understand that the New Democratic Party is with us, based on some of the amendments they have also submitted, so it would be great to see a consensus between the three parties in recognition that we increase the age—this would relate to issues such as detention—from 16 years to 18 years.

The Chair: Ms. Sims, as you can tell, NDP amendment 12.1 is identical.

Mr. Dykstra, go ahead.

Mr. Rick Dykstra: Thank you, Mr. Chair.

I appreciate the consideration the Liberals and the NDP have given to this. As everyone around this table is aware, we did move from a perspective that anyone under the age of 16 is exempt from the legislation, and the determination is made by the parents, obviously, what will happen to the children, if there are parents available to make those decisions. Obviously, if they are children under the age of 16, the state will have the responsibility to determine what should happen. That was a huge change from the previous Bill C-49 on human smuggling, in that it did not have an age exclusion with respect to detention.

On that side, the first point, Mr. Chair, is that I think we've moved a great deal from Bill C-49, representing the former human smuggling bill, to our current Bill C-31.

The second point is that the government is of the opinion, and there is a lot of evidence on the justice and legal side to show this, that the age of 16 is appropriate; it is an age when those individuals are at least able to make a decision and determine on their own what may or may not—or at least have some input into their outcomes. So we've determined that they can make an independent decision on whether they want to (a) use the services of a human smuggler, and (b) make decisions here when and if they arrive in Canada. It's our determination that the age of 16 is fair and it's appropriate, so we will not be supporting the amendment.

The Chair: Madame Groguhé, go ahead.

[*Translation*]

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

Our Liberal colleague is proposing this amendment, and we are proposing the same thing with subsection 12(1). Witnesses who have appeared before the committee have stressed the devastating impact of detention. Aside from the refugees, for whom the consequences of adopting this bill will be devastating, we must think very seriously about our responsibilities and our role as parliamentarians.

As part of our study, this committee has heard from some very qualified people who drew our attention to the anticonstitutional nature of a number of provisions of Bill C-31, including provisions relating to mandatory detention, particularly of children. But we are continuing to be deaf to the experts' observations.

I'm wondering what the experts we heard from, the front-line workers who presented studies and the refugees who told their stories are going to think of us, the MPs that we are.

To come back to clause 23 of the bill, which amends the mandatory detention of designated foreign nationals 16 years of age or older, I would like to remind everyone once again that these provisions are anticonstitutional and violate international conventions, including the Convention on the Rights of the Child. The 1951 Convention Relating to the Status of Refugees prohibits the arbitrary detention of asylum seekers, except for security or identification purposes. The Convention on the Rights of the Child prohibits the detention of children. The convention states, and I'm clarifying, that a child is a human being below the age of 18 years.

We are asking that the age of the child be harmonized with the Convention on the Rights of the Child. Furthermore, the experts we've heard from reminded us that mandatory detention is prohibited, except for the reasons set out in the IRPA.

Lastly, they stressed to us that the detention of children is also prohibited because it is devastating for them and for society. For children, this detention has devastating effects, both psychologically and mentally, and on their development. The separation of children from their parents, or even just seeing them detained, has an inhuman impact on them.

To conclude, we know what the 1951 Geneva Convention and the Convention on the Rights of the Child say about this. Experts from UNICEF and the other experts have also told us that the detention of asylum seekers is an exceptional measure that can only be considered as a last resort. The detention of children is inhuman and devastating. Canada should not introduce it into the Immigration and Refugee Protection Act. Having said that, the purpose of the amendment that the NDP is proposing here is, once again, to make Bill C-31 consistent with the Convention on the RIghts of the Child with respect to the age to be considered in deciding whether to release children who may be detained, or shouldn't be detained at all. A person stops being a child upon reaching age 18. That's what the conventions we've signed say.

Thank you, Mr. Chair.

● (0900)

[*English*]

The Chair: Thank you, Madame Groguhé.

Ms. Sims.

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

I'm also speaking in support of this amendment. It reflects the amendment the NDP has put forward as well. I want to remind all of us...and we're not going to go over all the testimony we've heard. I want to thank my colleague for her very eloquent summary of some of the key concerns.

When you have 16-year-olds who can be detained, what that means is they're going to end up in provincial prisons. We've already heard that under the current system, our immigration detention centres get pretty packed, and on a daily basis we have people who have to be housed in prisons. We've also heard about some of the circumstances around that.

I'm a mother. Mind you, I think my 27-year-old isn't making the right kinds of decisions and all kinds of things. You know, moms are always moms. To imagine that a 16-year-old would be housed in a prison, it's just not sitting right with me. I don't think it's something that would sit right with Canadians.

There's also the social impact. When you put young people at the age of 16...and you need to know, Mr. Chair, that I've worked with youth all of my life, as a teacher, as a counsellor, and as a community worker. One thing I do know is that the age of 16 is a very vulnerable age, both for girls and boys.

There is the social impact of detention that we have to take into consideration. I'm not saying no one should be detained, except for very limited reasons. I'm really pleading with my colleagues across the way, as parents and grandparents in some cases, to take a look at this, and say that a 16-year-old is not necessarily an adult. That kid, when he jumps on the boat, if it's a boat, is not saying, “Hey, I get to make an independent decision.” He's escaping something.

The other issue I want to discuss is that children under 16...the parents have a choice. It's left up to the parents to determine. It seems very much like Hobson's choice. The previous iteration said everybody would be detained and then the later iteration, the current iteration, says, “Well, if you're under 16, your parents get to decide.”

I absolutely agree that if children under 16 arrive, without any parents or family members, they would go to the state and the state would proceed. But when parents arrive escaping some pretty horrendous situations and are fleeing because their lives are at risk, I find it difficult to say to them, “You have two choices”, and they're real choices. The choices are, “You can keep the children in prison with you, or you can give them up to strangers, who you don't know, who will look after them for you while all this is happening.” As a parent, that would not be a choice for me because I would want to keep my kids with me.

Let us not keep children in prison, because we know the impact that prisons have on families.

● (0905)

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: I have four things, Mr. Chair.

First of all, the Minister of Public Safety still has the ability under this legislation to release anyone under detention. If a ship were to arrive and the minister had to make a determination, the legislation allows for him or her to decide whether or not detention is the right or proper thing for the child. So let's keep that in mind. It is always at the forefront of the decision-making process.

Second, I would point out that we are being consistent—this is in keeping with the young offender legislation, which uses the age of 16 as its cut-off point.

Third, I hate to admit this—well, I'd love to admit this, but I don't know if it's good that I've been around here this long. A number of years ago we dealt with age of consent. Mr. Chair, I know you were here at that time, and there was a lot of discussion about what should happen with the raising of the age of consent. We went from 14 years to 16 years, and I recall the vehement opposition from both the Liberal Party and the NDP. They expressed shock that we would dare to raise the age of consent from 14 to 16, because, as they considered it, Canadians of 14 were more than capable of making decisions for themselves. I wish we could have had some of the members who sit on the other side of the table here when we were trying to pass that justice legislation in a minority government. You would have helped us a great deal in moving the age of consent from 14 to 16.

The Chair: Thank you.

Ms. Sitsabaiesan.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): Thanks, Mr. Chair.

We have had witnesses—refugee lawyers and others working on the front line with the asylum seekers coming into our country—tell us that these children's ages are not necessarily accurate. They're coming from precarious situations such as war zones, from countries that may not have the infrastructure to have their ages recorded accurately. Experts who are dealing with this on a daily basis told us that officials sometimes make an estimation of the child's age. In a conflict zone, a child can end up not having much of a childhood and may mature far too soon. Based on their manner and the mature way they carry themselves, they may be artificially determined to be 16. We heard a witness say that a 14-year-old was erroneously categorized as a 16-year-old, and that we may continue to see that happen.

Now we have 13-year-old kids and 14-year-olds being put into the general population in our provincial prisons. One of our witnesses came from Manitoba and said that in Manitoba there was no immigration detention facility, so provincial prisons are the only option. So now we have 13-year-olds and 14-year-olds in prisons. It's absolutely abhorrent. This is another reason why the age should be changed from 16 to 18—to allow fewer children to be imprisoned.

● (0910)

The Chair: Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): One of the witnesses, Peter Showler, also talked about detention centres. I listened to what Mr. Dykstra said. You're putting a 16-year-old girl in a provincial detention centre. What kind of people are there in a provincial detention centre? Probably people charged with shoplifting, drug trafficking, solicitation for the purposes of prostitution. This girl hasn't committed any crime. She isn't guilty of anything at all and we're going to incarcerate her at a detention centre. I see a problem here. It's one thing to isolate people for identification and national security purposes for two or three days, but putting someone in an bad detention setting, that's a whole other story.

You proposed the detention of people 16 to 18 years of age without ensuring you have the physical resources for that detention to be safe and as harmless as possible for a young person. It's even more serious in the case of a boy. It's important to understand that, in the provincial detention system, incarceration isn't what's favoured for small crimes, it's community work. So what we find in provincial prisons are people incarcerated permanently, and not people serving their sentence on a weekend. These are criminals who are a little more hardened, and I would even say considerably more hardened.

There, you're putting a young person in an environment where there is an enormous amount of criminality and violence. Provincial prisons don't have minimum, medium and maximum security. All inmates are in the same place. It's up to the prison guards to place them in different wings, based on whether they are more or less dangerous. But what should the guard do with a 16-year-old?

It's all very well to adopt a bill, but where are the physical resources to apply it technically? We haven't heard anyone talk about that. All we've been told is that we are going to incarcerate them in provincial prisons. That's where the problem lies. You're talking about detaining 16- to 18-year-olds, which is already tragic, but detaining someone who's 16 in dangerous living conditions, that's totally unacceptable. If you were telling us that you were going to set up reception centres especially for children and detention centres for all the inmates, that would be something else entirely. But that's not what you're doing. You're handing over the responsibility of detaining and protecting this young person to a provincial authority. That's the issue.

As long as you aren't guaranteeing that the necessary resources will be in place, it is out of the question that we will agree to incarcerating 16- to 18-year-olds in a criminal setting. I argued cases before youth courts in Quebec, and I can tell you that no judge in Quebec would accept this kind of ridiculousness, ever. It would be considered in the cases of youths in detention. Before a judge decides to try a youth 16 to 18 years of age as an adult, major action is required. But in this case, the action is simply that an individual arrived in a way we consider irregular.

No, sir, that isn't acceptable.

● (0915)

[*English*]

The Chair: Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: Thank you, Mr. Chair.

We can say that children who have been born and raised in stable conditions like the ones we are familiar with become adults when they reach age 18. I'd like to give you a simple example. I've been an MP for a year now, and I have four children. My eldest is 18. Since I'm in Ottawa all week, I don't get home until the weekend. I thought that only the younger children were having trouble with the separation, but my eldest told me that I couldn't know how much she misses me and how much she needs me. I was very surprised by that because I told myself that, at 18, she had become independent, an adult. Those words had a profound effect on me.

As a mother, I'm putting myself in the place of all parents, all mothers who will have to see their children 16 and older incarcerated with them. I don't think we're considering the best interests of the children here. We made immense progress in respecting fundamental rights, human rights and universal rights. But I don't understand why today, going from 16 to 18, should pose a real problem. I would also like to stress the fact that this involves vulnerable people and children. I think we need to take that into account in the decision to move the age from 16 to 18 years.

[*English*]

The Chair: I'm not supposed to say anything, but I have a daughter who said the same thing.

Is there any more debate on LIB-13? This amendment is identical to NDP-12.1. I'll call the vote.

(Amendment negatived)

Mr. Kevin Lamoureux: Could we have a recorded vote on that one?

The Chair: You're a little late, but we'll do it again. Someone could say we're late, but I haven't heard them saying we're late, so we'll have a recorded vote.

Madam Clerk, if you will.

(Amendment negatived: nays 6; yeas 5)

The Chair: Mr. Lamoureux, LIB-14 is a duplicate of Ms. Sims's amendment, NDP-12.2.

Mr. Lamoureux, you have the floor.

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

I would move that Bill C-31 in clause 23 be amended by replacing line 39 on page 12 with the following:

> who was 18 years of age or older on the day

In short, to provide some comment in terms of the background of the amendment.... As we just had a previous amendment dealing with the whole age issue, Mr. Chair, and given what happened in terms of the vote, I suspect there's a very good chance that this particular amendment will also be defeated.

I did want to emphasize one other point. I do come to the table with some experience with youth. I was a chair of a youth justice committee and a member of the youth justice committee for about 10 to 12 years. So I've dealt with a lot of young offenders between the ages of 12 and 18, because a vast majority of young offenders are in fact under the age and go up to the age of 18.

In dealing with a number of youths directly, I have found quite often there's a sense that the best way sometimes you help a youth is to take them out of an environment and put them into a new environment. Then they seem to have a change in attitude. The reason why I say that is because when we have refugees who are 17 years old who are coming to Canada—and in this case it might be via a boat and they land in Canada—there is this sense of change. The environment is significantly different from the environment they've been taken from.

We have an opportunity at an early age, as much as possible, to make that a positive experience for someone who's 17 years old. By doing that, at the end of the day, the mental condition of that youth is going to be far better if in fact we keep them out of a detention centre. It has already been pointed out that a fair number of these detention centres are at more than capacity. So if they're at capacity, this then means they're going from the detention into a provincial corrections institution.

I have had the opportunity to tour provincial correction facilities in the province of Manitoba. I wouldn't want to see a 17-year-old refugee come to Winnipeg and end up in the Headingley jail, Mr. Chair. That would just be wrong. I think if you were to take a group of people into the Headingley facility...and it's no reflection at all on the staff at that particular facility. I must say, they do a wonderful job, given the facility they're in. But it is not a good environment for a youth who's trying to start over again in a different country.

I say that because I want members, in particular government members, to reflect on the mental conditions and the opportunity that is lost by us not dealing with this youth at an age, 18, when, as the vast majority of the world would recognize, adulthood starts. I recognize that for youth in different countries sometimes that maturity level is heightened at a much younger age because of their environment, but I think in the western world, 18 is the age. That is the age we have been going by for many years here in Canada. It's the age of majority, it's the age at which people get to vote, and so forth. I think if we would have had more psychiatrists and so forth, mental health workers, they would concur with the thought that 18 is a significant age in terms of a youth's maturity.

With that, I leave it with the table. It's just a reflection on other comments we've heard, and I look forward to the vote.

Thank you, Mr. Chair.

(Amendment negatived)

● (0920)

The Chair: It fails.

Mr. Lamoureux, Liberal amendment 15.

Mr. Kevin Lamoureux: Mr. Chair, I would move that Bill C-31 in clause 23 be amended by adding after line 41 on page 12, the following:

> (3.2) An officer may not issue a warrant for the arrest and detention of a person under this section unless the officer is satisfied that the person poses a threat to Canadian society.

In essence, Mr. Chair, just to keep it short, if you are not a threat to society, then why should you be detained? That's what we're reminded, and it is the essence of what it is I'm hoping to accomplish by moving this amendment.

(Amendment negatived)

(Clause 23 agreed to on division)

(On clause 24)

● (0925)

The Chair: Liberal amendment 16.

As you know, Ms. Sims, it's identical to NDP amendment 12.3.

Mr. Lamoureux.

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

I would move that Bill C-31 in clause 24 be amended by replacing line 3 on page 13 with the following:

> Division and who was 18 years of age or older

As you've already pointed out, Mr. Chair, it shows that the NDP and Liberals are in sync on this particular idea of 18 versus 16.

(Amendment negatived)

The Chair: Liberal amendment 16.1. Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chairperson, I would move that Bill C-31 in clause 24 be amended by replacing lines 6 to 8 on page 13 with the following:

> (a) they are released as a result of an officer ordering their release because the officer is of the opinion that the reasons for their detention no longer exist.

Mr. Chairperson, in short, this allows a person out of the mandatory 12-month detention if there is merit and they have been granted status. This is an important amendment. I would look to the government to possibly provide comment on this amendment, if they so choose.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Two things. Ostensibly, this change would remove the ability of the minister to order the release of anyone who is detained as part of an irregular arrival and instead give that authority to the CBSA.

It's our belief that when dealing with the safety and security of Canadians at the end of the day, that decision must rest, or should rest, with the minister who made the initial decision.

(Amendment negatived)

The Chair: Ms. Sims, NDP amendment 13.

Ms. Jinny Jogindera Sims: Thank you, Chair.

This amendment is fairly straightforward. I'm sure my colleagues across the way are going to vote in favour of this because this amendment is brought forward as a result of hearing testimony from stakeholder groups, including legal counsel after legal counsel, and also hearing from the Anglican Church and other such groups that presented here. They all talked about mandatory detention.

This amendment addresses—and this is where we're really trying to listen to what is of concern to the government, which, from all the arguments I've heard, is identity and security checks. This amendment makes explicit that once identification has been determined and the security check has been done, the person be released immediately.

What this does—and I've heard my colleague across the way saying to me that, of course, once these things happen, there's no intention of keeping people in detention. Of course, they will be released. But do you know what, Mr. Chair? People get very nervous when they have to rely on "of course, it's there" when they can't read the language. This purports to put that language in place very clearly, and yet it addresses the concerns raised by my colleagues across the way and by the minister.

It says:

> A designated foreign national whose detention ceases as a result of any of the circumstances described in subsection (2) must be immediately released.

I'm not going to reiterate what's in subsection (2) because I did that at the opening of my speech. I know this is one amendment that my colleague across the way is going to jump in and support. I can't wait for his support on this.

● (0930)

The Chair: Let's see.

Mr. Dykstra.

Mr. Rick Dykstra: While I really appreciate the support on the one—

The Chair: I'm sorry. I have my list and you're not on it.

Ms. Sitsabaiesan, go ahead.

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

As my colleague, Ms. Sims, has mentioned, every lawyer who has presented to this committee has stressed some concern with the clause for mandatory detention. Lawyer after lawyer spoke about its unconstitutionality, yet we see this government trying to punish desperate and traumatized asylum seekers as soon as they arrive, by throwing them in detention for a year, without review.

These refugees are, more often than not, held in provincial jails and treated like criminals, treated as guilty until proven innocent. That, we all know, is not the Canadian standard. It's a violation of human rights, it's also not effective in deterring human smuggling, and it is too costly, as our witnesses have stated. It costs approximately $200 a day to detain someone seeking asylum. Mary Crock, professor of law at Sydney University, told us that Australia has spent over $100 million in detention and over $60 million in compensation to asylum seekers and detainees who were wrongfully detained.

The most troubling part about mandatory detention is that it is a departure from Canada's compassionate nature. As Ms. Janet Cleveland testified, asylum seekers are a population that is "highly traumatized, has been exposed to war zones," and when they arrive, we will place them "in a situation of helplessness" and "brand them as criminals when they are not".

Canada's reputation of a global, international protection system is well-known and we want it to remain as such. We want to continue to be the safe haven for people in need. It only makes sense to uphold our Canadian values, the human rights of individuals, and allow refugees to settle as soon as their claim for refugee protection is allowed, by adopting this amendment.

This should be explicit in the law. In order to do that, we need to ensure that people are released from detention once it has been confirmed that their claim for refugee protection is allowed, or once a claimant's release has been ordered by the immigration division or the minister.

The Chair: Alain Giguère, go ahead.

[*Translation*]

Mr. Alain Giguère: I think Mr. Dykstra raised his hand before I did.

[*English*]

The Chair: I'm not going to comment.

You have the floor, Mr. Dykstra.

Mr. Rick Dykstra: I understand and appreciate Ms. Sims's encouragement. It's too bad; it sounds like she doesn't trust me all that much. In fact, the legislation and the practical approach that is taken with respect to...once an individual has....

I should add, before I say anything more, Chair, that we are going to make some amendments on the issue of detention. I would like to indicate that there has been a lot of listening, as all of us on the government side have indicated that, where possible and where necessary, we would certainly make amendments to the legislation that would improve the bill.

On the issue of detention, we are going to deal with that when it comes up sometime today. Again, if the bill's intent allows for the release of a designated foreign national for prescribed reasons, the problem with that, and why we won't be supporting the amendment, is it would result in the minister's not being able to detain those who are designated for detention for other reasonable grounds, i.e., criminality. While the amendment from the NDP's perspective purports to do one thing, it actually does more than that. It is our concern that there are times when, based on an individual's background, they need to be detained.

We can't put ourselves in a position where our legislation doesn't allow for that detention. Therefore, we won't be supporting the amendment.

● (0935)

The Chair: Monsieur Giguère, go ahead.

[*Translation*]

Mr. Alain Giguère: We aren't talking here about criminals or known terrorists; we're talking about people who arrived irregularly. This detention is mandatory for national security purposes. I'm now going to address the expert witnesses.

What we're seeing here is the same criterion as in the War Measures Act during the October Crisis in 1970, namely, a presumption of guilt, meaning that people can be incarcerated without benefiting from habeas corpus. So I have a very simple question for you: what reasons in this legislation could make it possible to circumvent the requirements of the Charter of Rights and Freedoms? With the Singh and Charkaoui decisions, it's clear that we cannot detain someone without a lawful order.

In those conditions, I would like to know how, when you drafted your bill, you were able to make it so the charter would not apply.

[*English*]

The Chair: It appears we need a lawyer.

Ms. Jennifer Irish: I would ask Scott Nesbitt to respond.

Mr. Scott Nesbitt (Counsel, Canada Border Services Agency, Department of Justice): Yes. I think as the minister explained at the first meeting of the committee, the government's position is that the bill is defensible under the charter. In taking that position, it's important to keep in mind that charter analysis is contextual, and that if and when a court is asked to look at the constitutionality of the bill, it will look very closely at the context of the problem the bill is trying to deal with.

In that respect, it's going to look at the important objectives the bill is trying to achieve, and that is primarily, as I think you've heard explained on previous occasions, confirming the identity and investigating the admissibility of persons who arrive in Canada in an irregular manner. It will look at the challenging operational context the government and its officials are faced with when that sort of irregular arrival comes to Canada, and it will compare the legislative tools that are available to the government under this bill with those that are used in other countries with similar immigration systems.

It's important to keep in mind that the detention regime will be assessed looking very closely at the conditions that lead to it being triggered, that is the designation criteria, and those designation criteria are tailored to limit or focus the ability to make a designation, which triggers these powers to those situations where they are truly needed. You can look at the wording there, and we've been through that already.

I think it's important to emphasize again that it's the context that matters here, and that context will be foremost in the constitutional analysis. For that reason, it's the government's position that it is defensible under the charter.

The Chair: Thank you, Mr. Nesbitt.

Mr. Giguère, you still have the floor.

Mr. Alain Giguère: Yes. I have many questions, but you indicated the context.

[*Translation*]

The problem is that, in the Charkaoui decision, the judges rendered a decision on the context. But you're giving me an argument that the Supreme Court judges very clearly rejected. If it's just a question of context, that's not acceptable. There has to be more for the bill to circumvent the application of the Charter of Rights and Freedoms. Legally, that's a first. You're saying that the Charter of Rights and Freedoms has no bearing on this bill and that it's a matter of context. Your statements are contradictory. You're saying that the charter applies to this bill and that the context will determine whether or not the situation fits with the criteria of the charter. Let me repeat, in the Charkaoui decision, the Supreme Court judges were very clear: either the charter applies or it doesn't apply. So in this case, they only way you can consider this bill valid is by saying that the charter doesn't apply.

You can't justify this by citing instances of context. You absolutely have to come back to national security. According to the Charkaoui decision, the only argument that you can make is that the country is in danger. And yet, in the Charkaoui decision, that was considered, but it was limited. So I have serious reservations.

First, does the charter apply or not? Second, how do you interpret the Charkaoui decision, given what you are calling contexts and the fact that they were listed and removed?

● (0940)

[*English*]

The Chair: Monsieur Giguère, remember me?

Mr. Alain Giguère: Yes.

The Chair: You have to look at me and talk to him.

Mr. Nesbitt, I don't know whether we have a standoff here or whether you have anything to add.

Mr. Scott Nesbitt: I think I can add a couple of comments very briefly.

First, the government's position is that the bill is defensible under the charter. It's not that the charter does not apply. Of course, the bill may be subject to a charter challenge; that's the way our legal system works. At the end of the day, it will be for the court to determine whether the bill complies with the charter.

The position is that it's defensible under the charter, not that the charter does not apply. The charter applies to all bills and legislation of the federal government.

The second point I would make, and very briefly, is that as Department of Justice counsel I'm not here to debate the law with you. I'm here simply to explain the law and the government's position with respect to the law.

You probably are familiar with the Department of Justice Act and section 4.1, which requires the Minister of Justice to examine every government bill that's presented in the House to ensure it's consistent with the purposes and provisions of the charter. I can tell you that this bill wouldn't be before the committee today had the Minister of Justice determined, when he did that examination, that the bill was not consistent with the purposes and provisions of the charter.

The Chair: You still have the floor, Monsieur Giguère. I have no problem with what you're saying. You can say you disagree with counsel—not a problem—but I don't think it's appropriate to get into a debate with counsel. He has his opinion and you have your opinion.

Mr. Alain Giguère: No. I requested information. He gave very important information.

[*Translation*]

You said that you had analyzed the admissibility of this bill under the charter. Can you tell me, with respect to the Charkaoui decision, what the enforcement assets are?

[*English*]

The Chair: You're making it tough for me.

Mr. Nesbitt has given a comment that counsel from the Ministry of Justice have reviewed all this. To be fair, you're doing what I would rather you not do, and that is to get into two lawyers having a.... It's nice to watch, but I don't think it's appropriate. My job is to make sure that members of Parliament don't get into a dust-up with the department.

The department is here to provide explanations of a bill. You may disagree with those interpretations—you are disagreeing with those interpretations—and that's perfectly appropriate for you to do. But I don't think it's appropriate for you to get into a legal argument with Mr. Nesbitt.

I'm here as chairman. I'm not a judge, and I don't intend to make rulings on legal opinions. Mr. Nesbitt may be right and you may be right, and that's the way it's going to be.

Monsieur, I'd rather that you don't challenge Mr. Nesbitt's statements. You can ask for clarifications, but I'd rather you don't challenge his statements.

● (0945)

[*Translation*]

Mr. Alain Giguère: I'll ask you again: what are the legal arguments with respect to the Charkaoui decision?

Mr. Chair, it's a matter of information and not a debate. I'm asking him to give me this information. He can table a legal opinion.

[*English*]

The Chair: If he knows the answer, that's fine.

Go ahead, sir.

Mr. Scott Nesbitt: I'm afraid I really don't have anything more to add to the initial explanation I gave you that referred to the context in which the bill operates and the objectives it seeks to achieve.

The point about the Department of Justice Act is a procedural one that talks about the process that happens before the bill is introduced in the House. I hope that helps you understand how it is that the government came to its position.

The Chair: It appears to have come to an—

[*Translation*]

Mr. Alain Giguère: If I were to ask additional questions, it would be simply to get him to give a personal opinion on the department. I think we need to avoid this type of situation with public servants.

[*English*]

The Chair: We appear to have reached an impasse, Monsieur Giguère.

Have you concluded? You probably want to go on, but if you go on, I have a feeling we'll disagree.

[*Translation*]

Mr. Alain Giguère: It would only be to force a public servant to disclose information against his employer. That's where we are. I asked for information, but he couldn't give it to me. However, if he has a legal opinion, I would like to hear it. That would clear up the problem.

[*English*]

The Chair: It appears he has given testimony now—or not given testimony...he has made a statement that he has told you all he can.

Mr. Nesbitt.

Mr. Scott Nesbitt: I would just confirm that the chair is right in assuming that I have explained all that I am able to explain.

Of course, both as a public servant and as a member of the bar, I am subject to certain obligations as a public servant to the government and as a lawyer to my client, which is the government, and not Parliament or this committee.

So the advice the department has provided is privileged. It's subject to solicitor-client privilege, and my professional obligations —like any member of the bar—preclude me from disclosing the content of it.

The Chair: I always admire Monsieur Giguère's arguments, but I think we've come to an end.

Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: Thank you, Mr. Chair.

I am not a legal expert like my colleague Mr. Giguère, but I am going to use common sense by recalling that, from what I know about law, you are innocent until proven guilty. I think everyone agrees with me on that. Having said that, we are against mandatory detention and, obviously, against the detention of children. A number of witnesses have said that passing this bill will lead to many challenges in court, which will create additional costs. We have talked about saving money, but, in light of the future legal challenges, I am not sure how we will be able to save money.

At any rate, in terms of the timeframe for reviewing the detention of children, as indicated under the first item, the age of the child should be consistent with the Convention on the Rights of the Child, and the detention of refugees should be an exceptional measure used as a last resort. Unfortunately, our amendment dealing with the age of the child was rejected. In addition, the detention should be applied in compliance with the conditions under the current Immigration and Refugee Protection Act. All those elements are already included in the act. Let me also remind you that all the experts have expressed their reservations about the detention of children.

We also have to try to mitigate the future damage caused by those detention measures on asylum seekers in general, and on children specifically. That is the reason behind our proposal to change the timeframe for detention reviews for designated foreign nationals.

● (0950)

[*English*]

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: I know this has been going on for a while, Mr. Chair, but I think it points to the importance of this. Once again, I want to reiterate to my colleagues across the way that all we're trying to do in this is to make explicit in words—in black and white—what we have heard were the intentions of the minister when he put together this bill.

(Amendment negatived)

The Chair: Mr. Lamoureux, Liberal amendment 17.

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

I would move that Bill C-31 in clause 24 be amended by adding after line 14 on page 13 the following:

> (3) A designated foreign national whose detention ceases as a result of the circumstances described in paragraph (2)(a) must be immediately released.

Mr. Chairperson, in the form of an explanation followed by a question, put simply—

Mr. Alain Giguère: Just a minute, please. I have a point of order.

The Chair: A point of order, Monsieur Giguère.

Mr. Alain Giguère: You have a problem of inscription. I voted in favour of the amendment. Is that understood?

The Chair: It wasn't recorded, but you've now put it on the record, so that's fine.

Thank you. You can continue.

Mr. Kevin Lamoureux: Yes, thank you, Mr. Chairperson.

Having moved the amendment itself, I am suggesting, in brief, that it allows for the release of a person within the 12-month mandatory detention. As you can tell on the previous two amendments, the mandatory detention has been an issue that has been hotly discussed and debated inside the committee. The vast majority, possibly, of all the presentations that we heard expressed concerns regarding the mandatory detention.

We've made it very clear as a political entity that being the Liberal Party, we do not support mandatory detention. We do believe there will be a constitutional challenge, an ultimately successful constitutional challenge, in regard to the mandatory detention the government has put into place. It is very unique. It's very hurtful in terms of Canada's international image. It's very hurtful in terms of the individuals. And this is what we really need to take note of, the individuals who are being put into or placed into mandatory detention.

Therefore, I would suggest that members support this particular amendment. But prior to the vote, Mr. Chairperson, I would ask Mr. Dykstra if in fact the government is prepared to share any legal opinion with the committee membership that would suggest that it is in compliance, or any legal opinion they have in regard to the mandatory detention issue. Is he prepared to share any legal document on that?

The Chair: I think we heard from legal counsel this morning. It may not have been the answer the opposition would have liked to have heard, that in fact the legislation is charter compliant.

He also indicated very clearly that there is solicitor-client privilege involved here, and by turning those documents over to anyone would put him, as a legal representative, in a wrongful position. It is not our intent to do that.

Therefore, I would say the answer to the question is no, we aren't able to do that.

● (0955)

Mr. Kevin Lamoureux: Mr. Chairperson, I would suggest to you as a client, and the government being the client, that they do have the ability, if they choose, to share a legal opinion.

Given the fact that we have had so many presentations, so many concerns in regard to the mandatory detention issue, again I would suggest, in the form of a possible question to the member—and it will be my last question on this particular clause, in relation to it—that whether it's in camera or in public, I think there would be great value to answering a lot of the concerns if in fact we would be able to see a legal document that the department has actually put together. As a client, the government does have the ability to share it with the committee, if they so choose, but it should be clear that it's the government that would be choosing not to share that document. There is no client-lawyer thing that would prevent them from doing that.

Thank you, Mr. Chair.

The Chair: You've answered that.

Mr. Rick Dykstra: The only thing I would add is this. This is actually subject to what amendments are coming forward. It's difficult for me to respond directly—I guess I did respond directly. Sorry. I apologize. I responded directly to the question.

But having said that, as I have indicated to Ms. Sims, there are amendments from the government coming forward with respect to the detention issue. Perhaps that will clarify for Mr. Lamoureux the government's position once those have been passed.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: I understand what Mr. Dykstra has just been saying. If there is a legal opinion that would help, we would be prepared to go in camera to receive it. We want to ensure that it has that kind of privacy shroud, so that we don't get into any issues.

The Chair: Well, it's never happened, and I doubt if it ever will happen under my observation. Most lawyers would go ballistic if they found that out.

Are there any other questions on Liberal amendment 17?

(Amendment negatived)

The Chair: Liberal 17.1 is withdrawn, Mr. Lamoureux?

Mr. Kevin Lamoureux: Yes, we're withdrawing it.

(Clause 24 agreed to on division)

(On clause 25)

The Chair: Okay, we're moving right along.

New Democratic Party amendment 14.

Ms. Sims.

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

We are moving this amendment at this time to address some of the concerns we've had about this mandatory detention. As you can see, we have proposed two amendments. One of them was that if we should end up with a designated group, like a minimum number—and we have suggested 50—that would lead to the designation of irregular arrivals. But as we did not get that, we're introducing a periodic review of the detention regime for designated foreign nationals, consistent with that which exists for permanent residents and foreign nationals under section 57 of IRPA, to ensure that the initial review occurs within 48 hours, then within 7 days, and once every 30 days thereafter. So it would occur every 30 days. In this we are also hoping we can raise the age of detention from 16 to 18.

They say you never give up, you keep trying in different ways, and we will, because this is what we believe in.

Mr. Chair, we don't move these amendments very lightly or to be obstructionist; we're moving these amendments because we have some serious concerns around the charter and constitutional challenges, and also international conventions.

In my previous life, my experience has been that two or three lawyers can sit down in the same room and you're not always going to get the same interpretation of the language before you. In this room we heard lawyer after lawyer, and even, I would say, witnesses who were more pro-government, saying that this could create a problem.

I think it is really imperative. I am very sensitive to the fact that my colleagues across the way and the minister heard the concern and they have put forward an amendment as well, which will come later. I want to acknowledge that we realize you have heard that. However, we believe this is the right way to go. Within 48 hours we should be able to do that first review. You know what? If we're worried about large groups, we've offered the government a solution for that, and that is to designate what a large group is; we put the number at 50. Of course, there was no will for that, so our position is that nobody should be detained without a review within 48 hours, and then another review within 7 days, and another review 30 days thereafter.

When you look at it, we're not trying to create new language here; we've gone into IRPA and lifted the language out of there to reflect it here.

If the concern is that this does not work with larger groups, I want to assure my colleagues across the way that I am willing, and I'm sure everybody on this side of the table is, and I'm hoping my colleague at the end of the line is as well, to reopen that clause where we were looking for a number of, let's say, 50 that would lead to irregular designations, and then we had suggested a different timeline for those designations. Because my colleagues across the way are not prepared to accept a number for those irregular arrivals when they arrive in large numbers, it leads me to believe we have to go back to living with the processes we have, and those are the timelines we are supporting here.

● (1000)

I could spend the next hour and a half reading into the record the testimony of witness after witness, from every party, who said the imperative nature of the government addressing this.... But you will all be relieved to know that I'm not going to do that. What I am going to stress very strongly is for my colleagues across the way to support this.

As you know, it is not a secret that we're opposed to many aspects of this legislation. We believe it's fundamentally flawed. We don't believe in a two-tiered refugee system. We believe everybody who arrives on our shore as a refugee or as an asylum seeker, no matter how they arrive here, should be treated exactly the same. We are willing to admit and to acknowledge, and to actually celebrate, the fact that our current system, including the much-appraised Bill C-11, already has in it the ability to detain until identity and security checks have been done. There's a review built in there. So for us, this review on a regular, prompt, and timely basis.... Before we put anybody in prison, we really have to justify it and we have to be able to review it. That person who is being detained has the right to that review.

By the way, we're not saying release the person if they are a national security risk or if they have criminality that puts Canadians at risk or if we don't know their identity.

We have been very reasonable here, once again, because this opposition wants to make things work. We've heard the government's concerns and we've worked very hard to try to address those. At the same time, we also have to protect the public purse. That's our job, too, to help you protect the public purse. The way we do that is to prevent you from leaving yourselves open to horrendous litigation and all the costs that go with it.

Mr. Dykstra, I know you're going to support this, and I look forward to hearing your response.

● (1005)

The Chair: Thank you, Ms. Sims.

Mr. Weston.

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

I appreciate your comments, because it really gives rise to a discussion on the human rights aspects of members of the Conservative Party, who really care about these things.

As a lawyer who's been in the human rights field for a long time, I'm thinking about several things you said. First, you did mention that where there are different lawyers, there will be different opinions. My opinion differs from the lawyer who's speaking to you, I would suggest.

You mentioned the timeframe required to do the work. Well, you know that we acknowledged the Supreme Court of Canada's decision, and we know that the charter applies and we know that the Charter of Rights is subject to exceptions that may be reasonable in a free and democratic society. What's reasonable is to make sure that true, legitimate refugee claimants get processed quickly.

My second comment to Ms. Sims is that we heard in New Zealand that they process claims in 15% of the time that we're presently doing that. We need to do some catch-up here. The colouring of that as a two-tiered system, which suggests there's some unfair inequality being visited upon certain applicants, is completely wrong. If “two-tiered” means that real, legitimate applicants get processed within 20% of the time, then, yes, I'm all for that. I think most Canadians would be as well. It's about time we understood what we're doing is to respect the human rights of people who really need to be protected.

Thank you, Mr. Chair.

The Chair: Ms. Sims, again.

Ms. Jinny Jogindera Sims: Mr. Chair, I had decided I would only speak once on this, but Mr. Weston leaves me no choice but to respond to some of the comments he made.

To talk about people who arrive by the so-called newly designated irregular mode, or the irregular arrivals, as not legitimate refugees, I find it very difficult. Even the two boats that came from Sri Lanka had very high acceptance rates for refugees under the Geneva Convention. Surely, we are not saying at this table that your mode of arrival determines whether or not you're a refugee under the Geneva Convention.

We are creating two tiers because we're saying that if you arrive in a grouping of two or more, you could actually end up being detained. All we're suggesting now in this amendment—because I want to get back to the amendment—is that while we do identification, verification checks, and all of that, and while we do security checks to ensure Canadians are safe, surely during that time it is not too much for a person who's being held in prison to expect that within 48 hours, and then 7 days and then 30 days thereafter, there will be a chance for them to appear before a panel or a review to have it explained to them why they're being detained and for their case to be reviewed.

We are not saying that everybody who arrives without identification should just be released. We're also not saying that everybody who arrives should not have a security check. We're saying all that should happen.

To assist the government, we were willing to take a look at—even though we're against designations of irregular arrivals—a number that would kick that into operation, simply because our feeling was that if you've got this huge volume, then we could take a look at different timelines. But the government didn't see the need for that, and because it didn't see the need for that, I want to go for this.

You know, New Zealand has a very quick turnaround time for a very simple reason. We heard the number of people who want to go to their country. We know the size of the country and all of that as well. We also heard from Australia about the devastating impacts of detentions.

● (1010)

The Chair: Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère: Mr. Chair, I call for a recorded vote.

In addition, I have a legal question. The previous Bill C-11 talked about timeframes of 48 hours, 7 days, and 30 days. If memory serves, that was included in Bill C-11 to accommodate the decision in the Charkaoui case, where the Supreme Court had made the timeframes quite clear. Is that correct?

[*English*]

The Chair: Are you having a nice day, Mr. Nesbitt?

Mr. Scott Nesbitt: Thank you, Mr. Chair.

The 48-hour, 7-day, 30-day timeline that I think the member is referring to has been in IRPA since IRPA was enacted in 2002. That's well before the Supreme Court of Canada decision. It's the timeline for detention reviews before the immigration division for people who are detained pursuant to division 6 of IRPA. The Charkaoui decision dealt with a different detention regime that applies to those people who are subject to security certificates and it had different timelines. It wasn't the 48-, 7-, 30-day timeline.

The Chair: Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): I was actually going to raise a point of order, because in this particular committee we're discussing Bill C-31, and I think asking questions about another bill that's not before this committee is inappropriate. We really need to address what is in this bill that is before the committee today.

Since the question has now finished, my point of order is no longer valid.

Thank you.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Chair.

I appreciate Mr. Weston's comments. I suppose if I were an extremely hopeful individual on this, I would ask that all of the amendments pertaining to the issue of detention be withdrawn and that we be allowed to move our amendment on this. But we have a process, and we'll follow that process.

I will say a few things about what Ms. Sims has indicated.

Mr. Weston has addressed very clearly and succinctly the issue of human rights, which I think is extremely relevant to what we're discussing here.

I would also indicate that we are not in agreement. In fact, one of the witnesses, a professor from the University of British Columbia, who is very much opposed to this legislation, confirmed and supported the fact that a queue exists. There is a refugee queue, and there is an order. There are a finite number of individuals we accept on a yearly basis. We have an obligation, a human rights obligation, to fulfill our mandate in terms of what those refugee numbers look like and who we accept on a yearly basis.

It is our opinion, and the opposition does not have to share this opinion, which they've made clear time after time after time, that allowing individuals to simply jump to the front of the line because of how they were able to achieve their arrival in Canada is simply not fair. If there's one principle Canadians understand very clearly and expect from their leaders, whether it be at the municipal, provincial or federal level, it is the issue of fairness. We think we have struck a balance in terms of how to approach the intercessions or the arrivals of these ships. And let's face it; they don't happen very often. We had a couple of witnesses who described the event of a ship arrival as something that happens once, twice, or perhaps three times a decade. It represents less than 1% of a decade of refugees who have been accepted into this country. So we need to put this whole issue in context in terms of how we have put forward the legislation.

I will say that we have listened. We've heard, whether it be from advocates from a human rights perspective, whether it be those who work directly with refugees in settlement services, or whether it be from the legal profession, and we have acknowledged that an amendment to this clause is necessary. We don't have to move any amendments. We certainly could just charge forward. But there has to be an acknowledgement, I think, whether it be tacit or otherwise, that listening was part of this process.

While I accept that the opposition has a job and a responsibility as Her Majesty's loyal opposition, there has to be an understanding that this is a government that listens. This is a committee of individuals who have decided and determined that an amendment to this clause is necessary. At the proper time, Chair, I'm going to move that amendment. And I'm hopeful that we have, as we did yesterday a couple of times, unanimous support to deal with an issue that definitely needs to be addressed.

● (1015)

Mr. Kevin Lamoureux: Mr. Chairman, given that there has been a recorded vote on the issue—and some of the comments—I thought it best to say a few words.

First, in addressing Mr. Weston's point in regard to.... He seemed to take some exception to the idea of two tiers of refugees. We do need to be fairly clear on that particular point. Even with what I understand are the amendments that are coming onside from the government, there are still going to be two types of refugees here in Canada.

If you arrive via plane because you might have the economic means as an individual, make a refugee claim as a legitimate refugee, work through the system, and are given that refugee status, you as a refugee are treated quite differently from someone who might not necessarily have the same mode of travel available, or the same financial resources, and who ultimately comes in as part of a larger group of people via a boat.

As Mr. Dykstra points out quite well, in the last 10 years we might have had 150,000 to 200,000 refugees come in. Out of that, you're talking about a relatively small percentage that would be coming in via boat. We're talking about two sea vessels combined, the *Sun Sea* and the *Ocean Lady*, with fewer than 560 people. But because of that mode of arrival, the government has made the determination that it's important that Canada establish these two tiers for refugees and the whole concept of mandatory detention.

Yes, we're glad to see that the government appeared to be listening to some of the concerns in committee, but it hasn't gone anywhere near far enough in acknowledging the many flaws within Bill C-31, which would include, as an example, getting rid of mandatory detention, period. What we do know is that the current system actually works, and it has worked and served Canadians well in regard to detention. We heard that from the Canada border people.

So we support the amendment, and we look forward to ultimately hearing all of the government amendments related to this particular issue.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Lamoureux.

Mr. Weston.

Mr. John Weston: Thank you, Mr. Chair. I'll be brief.

There was a series of ads on TV from the defence department. They said something like “resist chaos” or “fight against chaos”.

Our refugee system isn't effective in snatching the lives of tortured or beleaguered people from their torturers because we invite chaos to our shores. It's not effective because we just open our doors to everybody who gets here willy-nilly, by any means. Our refugee system will be more effective if we do in fact make sure there's some order in the way people are processed.

So call it two-tier or call it whatever you want. What we cannot have is people coming willy-nilly to our shores by any means of transportation, spilling through the gates unidentified and unknown, for their security level or anything else.

Thank you.

● (1020)

The Chair: We are dealing with amendment NDP-14. There has been a request for a recorded vote.

(Amendment negatived: nays 6; yeas 5)

The Chair: It fails.

Ms. Jinny Jogindera Sims: Mr. Chair, at an appropriate time, would it be possible to have a comfort break for five minutes?

The Chair: Done—we'll suspend for a few moments.

● _____ (Pause) _____ ●

● (1030)

The Chair: Okay, we will reconvene.

We just voted on NDP-14. We are now on NDP-15.

Ms. Sims, you have the floor.

Ms. Jinny Jogindera Sims: We will not be moving this amendment as we did not get the designations we were looking for earlier.

The Chair: Thank you.

Mr. Lamoureux, please go ahead on LIB-18.

Mr. Kevin Lamoureux: Yes, thank you, Mr. Chair.

I would move that Bill C-31 in clause 25 be amended by replacing line 19 on page 13 with the following:

was 18 years of age or older on the day of the

Mr. Chairman, maybe you can call this the last chance for the government to reconsider the 16 to 18 issue. I don't think we need to continue the debate. I think, in essence, that they have already caught the principle of it.

I'm comfortable with going right to the question, if you like.

(Amendment negatived)

The Chair: On NDP-15.1

Oh, it's the same one. Sorry, that is gone.

We are now on LIB-19.

Mr. Kevin Lamoureux: May I withdraw that, Mr. Chairperson?

The Chair: We now go to LIB-20, Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chairperson, I'm going to move that Bill C-31 in clause 25 be amended by replacing line 30 on page 13 with the following:

detention on the expiry of 25 days after the

To provide a bit of an overview on this particular amendment, this is in essence talking about the importance of judicial overview. I appreciate that the government does have some amendments that are coming up, and that's one of the reasons why I withdrew the LIB-19 amendment, because I do much prefer the lower number of seven, which the NDP were proposing, and I understand the government bill is proposing 14 days before the first real opportunity for judicial overview.

This particular amendment, on the other hand, emphasizes that, if you do not meet the requirements within that first 14 days, or whatever alternate day is chosen by the committee, Mr. Chairperson, it becomes an issue of the second incidence before you get to have that opportunity for judicial overview.

My understanding, based on papers that are following this particular amendment and on some announcements that were made yesterday, is that it's going to be a six-month period for that second opportunity for review. We believe that's far too long. It would be far more appropriate to have it 25 days after the first judicial review, so the purpose of this particular amendment is to emphasize that point.

Yes, it's great that we would have a judicial review, ideally, with seven, possibly with 14 as an alternative, but at the end of the day, the second incidence in terms of having that review would be far greater by having it 25 days after the first review.

That's the purpose of this particular amendment. We encourage members to vote in favour of it.

Thank you.

(Amendment negatived)

● (1035)

The Chair: LIB-21 is before us.

Ms. Jinny Jogindera Sims: Chair, could we just see that again, please? I had a senior moment, and that happens these days.

The Chair: Do you want to vote again?

Ms. Jinny Jogindera Sims: Yes, please.

The Chair: Okay, we'll vote again. It's irregular, but we do things like that sometimes.

(Amendment negatived)

The Chair: We now turn to LIB-21, Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I would move that Bill C-31 in clause 25 be amended by adding after line 38 on page 13 the following:

> (4) Subsection (1) does not apply to a designated foreign national who is accompanied by his or her child who is 18 years of age or younger.

Again, I would emphasize that the current system works, Mr. Chairperson. In essence, this motion, if passed, would help keep families together.

We heard from presenter after presenter how important it is to keep families together. I think the worst thing we could be telling a refugee who arrives with a 10-year-old child is that you, as the parent, are going to be going into a detention centre. We know that quite often it is a provincial jail. You can take your 10-year-old child with you or you can have your 10-year-old go into some form of child foster home or something of that nature. I think that would be a cruel decision to force a parent to make.

This amendment, if passed, would help deal with that particular issue. I would encourage all members to support this amendment.

(Amendment negatived)

The Chair: What are you doing, Mr. Dykstra? Is this a point of order?

Mr. Rick Dykstra: No. I thought you were asking whether I was speaking to Liberal amendment 21. I thought you were asking me if I was speaking to it, and I was not.

I actually want to move our amendment to clause 25. I'll read it out loud.

● (1040)

The Chair: Just wait one moment, please.

Mr. Rick Dykstra: We have distributed it.

The Chair: Well, I don't have it, but that's fine.

Mr. Rick Dykstra: That's fine. Go ahead. I'll wait.

The Chair: Are you ready, Mr. Dykstra?

Mr. Rick Dykstra: Chair, I move that Bill C-31 in clause 25 be amended by (a) replacing lines 22 to 25 on page 13 with the following:

> the reason for their continued detention within 14 days after the day on which that person is taken into detention or without delay afterward.

And then (b), Mr. Chair, replacing lines 30 to 34 on page 13 with the following:

> detention on the expiry of six months following the conclusion of the previous review and may not do so before the expiry of that date.

Mr. Chair, we've gone through a number...well, not to mention the number of amendments, the vast array of presentations, discussions, feelings, perspectives, and beliefs on what the issue of detention should represent in terms of overview and review. It's our feeling, and I said at the outset of the Liberal and NDP amendments on clause 25, that we would in fact be moving amendments to this clause. We heard from everyone who witnessed and commented on the issue that there was in fact, or should be in fact, some form of review that would take place during that timeframe.

I think it's important to note that the new timeframe, in terms of an individual case for refugee status, is going to move much quicker than in the past. Mr. Menegakis has on several occasions gone through the timeframe and the length upon which decisions are delayed, do not come to a conclusion, and take over a thousand days to come to...much longer than the 12-month period we're talking about here. The new legislation will actually move that process forward in an expedited and fair way, both for those who would achieve refugee status and for the sake of those who do not achieve refugee status in that they do not have to wait months and years for a decision.

The fact that there is a 12-month detention period within the bill certainly doesn't speak to the timeframe upon which decisions will be rendered under the legislation, but having said that, there may be circumstances where individuals are detained for a period of over three or four months, and it could be up to a year.

The amendments I've moved to include within the bill this morning, Chair, I think—no, not I think; I believe and I know they have addressed the issues brought forward. There will now be a review within 14 days after the day the individual has been detained. Within 14 days, they will have the right to a review, and at the six months' timeframe, if they are still in detention, which a vast majority will not be, but if they are they are then afforded another review.

I know that my colleagues on the other side of the House and on the other side of the table here this morning have indicated they would like a second or a third review to happen much quicker. That's their position.

The fact that we are offering up two reviews within that 12-month timeframe shows that the government not only has responded but, to be fair, has also listened to the concerns. We believe, Chair, that this will in fact solidify the issue pertaining to detention.

● (1045)

The Chair: Ms. Sims, go ahead.

Ms. Jinny Jogindera Sims: Mr. Chair, I have an amendment. We don't have printed copies, so I'm going to beg indulgence. It's fairly straightforward, so I will read the amendment into the record.

I move that Bill C-311 in clause 25 be amended by replacing lines 22 to 25 on page 13 with the following:

the reasons for their continued detention within seven days

The rest of that sentence would stay the same. Then “six months” would be amended to “30 days”. After the word “review”, we would have a comma, and it would say:

and every 30 days thereafter.

The Chair: Does everyone understand the amendment to the amendment?

Ms. Sims, do you wish to speak on this?

Ms. Jinny Jogindera Sims: Yes, I would like to speak to it.

I want to acknowledge that the minister and my colleagues across the way certainly did listen and hear the concerns expressed by the myriad number of experts, as Mr. Dykstra said, whether they were advocacy groups, lawyers, or refugees themselves, who came forward and talked about the legalities of this and the concerns around detention.

Let me put it on the record: we are still against mandatory detention. We're still against the two-tier approach, but we are also here to try to mitigate this bill as far as we can, and to make it work. We did try a previous amendment in which we wanted a review done within 48 hours.

In light of the fact that the government feels that is not doable, and also the fact that our amendment was defeated, we are here with a compromise in the form of this subamendment, and we are now saying seven days. I think to have seven days for the initial review is very generous. And we're looking at people who are imprisoned; we're not talking about people who are walking around out there. I'm certainly hoping that my colleagues will be open to that.

The other is that after that initial review there should be reviews every 30 days, and once again, that's doable. We are not saying that everybody who comes to our shores by whichever means should just walk in without going through certain checks. We realize identification and security checks have to be done.

At the same time, we don't feel we should be welcoming asylum seekers—just because of their mode of arrival or because of the numbers they arrive in—by putting all of them in detention, in jail, for 14 days without their even getting a chance for review, and then six months after that...?

I think when we look at our rule of law and habeas corpus and various existing conventions, this is way over the top, and as much as I appreciate the move made by the government...I want to acknowledge that and get that on the record. At the same time, I feel it does not go far enough. One of the basic things we value is our liberty, and what we want for ourselves, we want for others. So to take away somebody's liberty for 14 days before they even get to find out what's going on and get a chance to present a case, I'm sure is not humane. It will also contravene many....

I'm not a lawyer, so I'm not going to get into the legalese.

Also, six months after that...that's a long time. With the current system...I know I've heard my colleague say we need that 12 months. I want to remind all of us, we have more than 12 months now. Mr. Dykstra, I'm sure you know we still have people from the boat situation in custody; they haven't been released yet.

Our current legislation, including Bill C-11, covers a lot of the concerns we have, and I hope the government will look at this subamendment in the way it is meant. It is meant in good faith to make something work, and we also heard your concerns around the 48 hours, so we've gone to the seven days. We certainly hope you would support this.

It would be good to get unanimous support for an opposition amendment.

● (1050)

The Chair: I admire you because you never give up.

Ms. Jinny Jogindera Sims: You know what? My father told me that all the time.

The Chair: There you go.

Mr. Lamoureux.

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

It's an interesting dilemma. On the one hand, the system currently in place has clearly been demonstrated to be effective. It has actually worked. We have the capability to detain individuals that government would be concerned with in regard to safety or any other issues. The system is there.

Then the minister comes up with this Bill C-31, mandatory detention. Opposition and lawyers from coast to coast, many average Canadians, and plenty of refugees start running up the red flag saying that it is not right for this government to be bringing in mandatory detention. There was a fairly significant backlash to this minister's decision to bring in mandatory detention.

Then we come to committee stage and presenter after presenter makes the case that mandatory detention is a bad thing.

The minister, in his wisdom, through the committee here, has now said that we're going to succumb to the pressure. We're going to acknowledge that, yes, we made a mistake. I acknowledge the courage it would have taken for the minister to recognize he did make a mistake here.

We're now putting in something that at least allows for judicial oversight. That is, in fact, a positive thing. The idea that it's 14 days versus seven days.... Sure, it would be great to have it at seven days. I think in the one amendment that we were looking at we had 20 days, which was based on one of the presenters. The fewer the days, the better it is. The amendment that's being put forward is something that would make the legislation better, if in fact the 14 days were to pass.

But you know, had the minister brought in legislation originally where it talked about putting in this restriction, where it said we were going to be having 14 days, and we were going to have six months after that, we in the opposition would have been voting no. The reason why we would have been voting no is because we would be arguing that the system currently works and this makes the issue worse. That's the reason why we would be voting against it.

In acknowledgement that the minister has made a substantial change, I think there is value in terms of saying yes to the amendment only because it improves the original legislation. But in no way should it be taken, Mr. Chairperson, as an endorsement of what it is the minister is actual doing, because we need to recognize that the current system is better even with the subamendment that has been proposed to the amendment itself.

That is the reason why we would support the subamendment. I anticipate, given the numbers, that it will likely not pass and then we'll go on to the amendment itself.

I did want to make it very clear that the minister, yes, has recognized he has made a mistake, but he hasn't gone far enough. That, we would argue, is most unfortunate, Mr. Chairperson, because imagine if you're that refugee and you don't quite make the 14 days. After 14 days, you haven't been cleared. You're waiting six months before you're going to get the next opportunity to be released from the detention centre.

That's the reason why we believe, at the very least, we should be looking at...one presenter said 25 days. This particular amendment suggests 30 days. The fewer the better, quite frankly. I'd feel most comfortable with 25 days. If we had 25 days, at least then it would better reflect the current system.

● (1055)

In that sense, then, I would have nowhere near as much reservation in terms of voting in favour of it. I just wouldn't want my vote to be misinterpreted, and that's the reason why I thought, Mr. Chairperson, I would express what my feelings are and what the Liberal Party's position is on this whole issue.

Thank you, Mr. Chair.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I'm just responding to Mr. Lamoureux's comments. He doesn't do a whole lot of justice to the subamendment being moved. It puts us even in a stronger position to vote against it.

What I do want to comment on is this feeling that's there among the public. He's mentioned lawyers who have come here, he's mentioned individuals who have come here, but there are people who came here and had no difficulties at all with the one-year detention issue. They acknowledged that when questioned. There are literally, across this country, a majority of Canadians who don't have a problem with 12-month detention.

I find it interesting, this process upon which our Westminster model of Parliament is built, because there are three readings of a bill in the House of Commons, and after second reading the bill comes to a committee to be studied and reviewed to determine whether there can be improvements made to that bill. I love this process. I think it's the best process in the world because it gives us the chance to make sure that we do our best to get things right.

To say three times in your speech that you're glad the minister acknowledged a mistake—he didn't make a mistake, the ministry didn't make a mistake, and this government didn't make a mistake, because it's followed the process. It's come to this committee, Mr. Chair, we're doing a review, we're acknowledging that the bill, and particularly this part, clause 25, can be improved, and that's what we are doing. So maybe it's a question of a little bit better understanding of the process, but I do not see in any way, shape, or form why this should be considered a negative. In fact, from the perspective of how our system works, the fact that clause 25 of this bill is actually going to be amended I would see as a positive step for all of us who are in the House of Commons.

● (1100)

The Chair: Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère: Thank you, Mr. Chair.

I have taken note of Mr. Dykstra's comments. I would basically say to him that Bill C-11 became a good act. You passed that legislation. You even supported, approved and encouraged it. It was the legislation that could solve all problems. The shortcomings that you have raised do not exist, which means that terrorists and thugs who come here are screened out.

Those people have been detained. They have been separated from the refugees. So claiming that our national security is in danger and that we don't want those people to be our neighbours is not realistic; it is not happening and it will not happen, even with the former legislation and, especially, with C-11.

The problem with Bill C-31 is that you are going to punish those who came here as irregular arrivals. That is punishment. It is not detention because they have already been detained. It is imposing a penalty under difficult material conditions.

I am not sure whether anyone can answer the question, Mr. Chair. In terms of detention centres, will there be material changes? Will new detention centres be built? Will buildings be transferred from the Canadian prison system to the Department of Immigration? What will you do to improve the situation? Spending a year in a provincial prison is no picnic.

[*English*]

The Chair: A point of order, Mr. Dykstra.

Mr. Rick Dykstra: I don't have a point of order. Obviously Monsieur Giguère has a question to staff, and once that's completed, I do want to add one thing to their point.

The Chair: Ms. Irish.

Ms. Jennifer Irish: Mr. Chair, I would ask Nicole Lefebvre from CBSA to answer the question.

Ms. Nicole Lefebvre (Acting Director, Inland Enforcement, Programs Branch, Canada Border Services Agency): Thank you for your question.

I believe it would be inappropriate for me to comment on what decisions the government might make about establishments, what we're going to do with our detention facilities. I can only speak to the existing detention facilities that we have in place. I've heard numerous comments about incarceration in correctional facilities. In fact, we'll make the best use of the existing immigration holding centres we have in place, as well as using facilities that are meant to be able to take in families and individuals who have particular needs.

[*Translation*]

The Chair: Yes?

Mr. Alain Giguère: He answered my question.

[*English*]

Mr. Rick Dykstra: The only thing I would add to that, Chair, is this. I don't know if the opposition is aware of this, but I've actually had the opportunity to tour the Rexdale detention facility. In fact, I had dinner there. That facility is actually undergoing an almost completed expansion to be able to allow for the use of the detention facility versus any other type of a facility once the detention facilities are full. So we are actually acting upon the understanding that we need to provide those facilities for those who arrive and will be detained. It's a pretty aggressive growth in terms of what that facility is going to look like upon completion, Chair.

The other thing I'll add to it is this. On the way that Public Works moved forward with respect to how this tender was offered and how it was completed, because Ms. Sims has said this on a number of occasions, about cost-effectiveness and saving money, and the rest, the fact is that this detention facility expansion was actually completed at the cost of the owner. The federal government has not paid for the capital expenditure in that facility. The tender merely went out and asked for service providers to the federal government to indicate how they would provide the service and to what degree they would provide the service. So the building of that facility has actually not cost the federal government any money.

I do think we're moving forward responsibly. I think we're actually responding to the concerns that have been put forward by the opposition that in fact we need to ensure that facilities are available. The federal government is actually currently undergoing that process itself.

● (1105)

The Chair: We're dealing with clause 25 and we're dealing with an amendment to the amendment put forward by Ms. Sims.

All those in favour of the subamendment?

(Subamendment negatived)

The Chair: We have the government amendment.

All those in favour?

Ms. Jinny Jogindera Sims: I'd like to debate on this amendment.

The Chair: I'm sorry. Go ahead, Ms. Sims.

Ms. Jinny Jogindera Sims: I cannot express my disappointment that we did not get unanimous support for that, and it would have been good. However, I do want to acknowledge the move that has been made by the government side and the fact that they did hear the concerns. It is with a great deal of reluctance that I'm going to be supporting the amendment, because I believe for people who get designated as irregular arrivals, this is an improvement on what existed originally. And our job here as the official opposition is to try to mitigate these circumstances.

At the same time, I do have to once again—and I will try to do it succinctly—express my gravest concerns about keeping people in detention. I'm not talking about people who are arriving here as terrorists carrying machine guns. I'm talking about people who are fleeing for their lives. Once they are here and they seek asylum under the Geneva Convention, and then once we know their identity and once we've done the security check, if they are not a danger to us, I think it's unconscionable to keep them detained. What I'm still finding very difficult is that, first, 14 days is still too long, and six months after that....

As I said, I made my points earlier. I won't repeat them, but I just want to express my concern. But in order to make things better for the people who arrive than the bill would have otherwise provided, I will be supporting this amendment.

The Chair: Okay.

Is there further debate on the amendment?

(Amendment agreed to)

The Chair: Does anyone else have anything to say on clause 25?

(Clause 25 agreed to on division)

(On clause 26)

The Chair: We're moving on to Liberal amendment 22.

Mr. Lamoureux.

Mr. Kevin Lamoureux: We're going to withdraw that amendment.

The Chair: Then we'll move to Liberal amendment 23.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I would move that Bill C-31 in clause 26 be amended by replacing line 6 on page 14 with the following:

> designated foreign national who was 18 years

It's self-explanatory.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Just in the offer-up, perhaps there's a way to move a little quicker through this. It's up to the opposition whether they want to speak to this. But Liberal amendments 23, 24, 25, 26, and 27 and NDP amendments 15.2, 15.3, 15.4, 15.5, and 15.6 are all addressing an identical issue.

I can tell you the government is going to be voting against all those amendments. If we were to combine them and put them to a single vote, it might expedite the process.

● (1110)

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: We're certainly open to expediting the process. The wording is almost identical in every single one of them. If somebody wants to speak, let her speak the first time round and then we can do the vote.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Yes, we're comfortable with that. We recognize that they're all going to have the same eventual outcome.

The Chair: So the chair understands that we're going to be voting on all of the amendments for clause 26.

Let's do it one at a time. Can we do all of 26?

Mr. Rick Dykstra: Yes.

The Chair: Then we're going to vote on 26.

All those in favour of all of the amendments on clause 26, even though they haven't been moved.

Ms. Rathika Sitsabaiesan: Is it possible to go through them quickly so they're actually moved. I'm just thinking procedurally.

The Chair: I'll do whatever the committee wants, and that's reasonable.

You tried.

All those in favour of Liberal amendment 23?

(Amendment negatived)

Mr. Rick Dykstra: We're not supporting it.

The Chair: All those in favour of Liberal amendment 24?

(Amendment negatived)

The Chair: I know we're not following procedure, but it's the chairman's ruling that it fails, because they've all said it fails, and the committee knows what it's doing.

NDP 15.3 is a duplicate.

All those in favour of Liberal amendment 25?

(Amendment negatived)

The Chair: NDP amendment 15.4 is a duplicate.

Mr. Rick Dykstra: I have one government amendment that needs to be made.

The Chair: On clause 26?

Mr. Rick Dykstra: Yes, on clause 26. I'm moving an amendment because of the change that was made in clause 25. I guess I should wait until it's distributed.

The Chair: Proceed, Mr. Dykstra.

Mr. Rick Dykstra: I move that Bill C-31 in clause 26 be amended by adding after line 20 on page 14 the following:

> (1.1) Despite subsection (1), on the conclusion of a review under subsection 57.1 (1), the Immigration Division shall order the continued detention of the designated foreign national if it is satisfied that any of the grounds described in paragraphs 1(a) to (c) and (e) exist, and it may not consider any other factors.

Basically, what the amendment does, Chair, is clarify that the immigration division must order the continued detention of a foreign national if any of the factors in paragraphs 58(1) to (c) or (e) exist, and this amendment actually removes from consideration (d), which explicitly excludes designated foreign nationals.

● (1115)

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: Once again, we are pleased that the government has acknowledged that detention without legitimate reason is against the fundamental rights of refugee claimants.

We remain fundamentally opposed to detention, and we have expressed that a number of times, and to the designation of two-tiered refugees and of treating people who are coming to us from very, I would say, fragile situations as criminals when they arrive here. However, this amendment appears to be a corollary to the amendment in clause 25. We will be asking for immediate release unless the detention is continuing for these reasons, and I think those are stipulated: danger to public, flight risk, security threat, and the identity is not established.

That is just to let the government side know that we will be supporting this amendment, because once again we feel that the government has made a move in the right direction. The absolute right move to have been made in this case would have been to accept the fact that we needed to allow Bill C-11 to be operationalized, and at the other end, to have accepted some of our other recommendations, but as Mr. Dykstra pointed out, this committee stage is an important stage in the legislative process. It is a chance where we get to take time...and I wish we had more time to reflect on the testimony we heard and to review it, because I like to go over those things in detail, but I haven't had that time.

It behooves us, then, when the government makes a step in the direction to address some of the issues that have been raised, to acknowledge that action, and I'm doing so here. But once again, you do know that we are fundamentally opposed to detention of arrivals to our doorsteps except for identification and security reasons.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I guess I would just highlight one aspect, and that is that from the Liberal Party's perspective, we do see there is value in certain situations for detention. This deals with some of those values, such as danger to the public, risk of a person to take flight or disappear, and issues in regard to identity. Those are good reasons for being able to detain someone.

Where we object, as we've already talked a great deal about, is to the mandatory detention without proper judicial overview, and we'll leave it at that.

Thank you, Mr. Chair.

(Amendment agreed to)

(Clause 26 as amended agreed to on division)

(On clause 27)

The Chair: Clause 27, Mr. Lamoureux.

Mr. Kevin Lamoureux: I move that Bill C-31 in clause 27 be amended by replacing line 32 on page 14 with the following:

> designated foreign national who is 18 years

(Amendment negatived)

● (1120)

The Chair: NDP-15.5 is a duplicate.

Mr. Dykstra.

Mr. Rick Dykstra: Yes, Chair, one more amendment, which is consistent with our amendments in sections 25 and 26. I believe everyone has a copy...or let me ask, through you, Chair, if everyone does? Okay.

Let me know, Chair, when I can go ahead and read.

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: I move that Bill C-31 in clause 27 be amended by (a) replacing line 31 on page 14 with the following:

58.1(1) The Minister may, on request of a

(b) replacing lines 37 to 41 on page 14 with the following:

warrant the release.

(2) The Minister may, on the Minister's own initiative, order the release of a designated foreign national who is 16 years of age or older on the day of the arrival, that is the subject of the designation in question, if, in the Minister's opinion, the reasons for the detention no longer exist.

(3) If the Minister orders the release of a designated foreign national, the Minister may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that he or she considers necessary.

Just speaking briefly to this amendment, Chair, one of the concerns that was brought forward from both witnesses, and obviously Ms. Sims and three or four members of the opposition at committee, was that there was no place that the minister's responsibility in this regard was going to be stated except potentially in regulation.

By moving this amendment into the legislation, it acknowledges that there is at the minister's discretion the ability to release an individual who has met the key criteria in terms of their identity, the safety issue, their background, and it puts the minister in a position to allow for the release from detention of one of the irregular arrivals. By putting it in the legislation, it shows there's a further method upon which detention can be lifted from an individual who arrives in the country through irregular means.

● (1125)

The Chair: Thank you, Mr. Dykstra.

Ms. Sims.

Ms. Jinny Jogindera Sims: Chair, I would like to try a subamendment, if I may. The amendment would read as is—

The Chair: On a point of order, Mr. Weston.

Mr. John Weston: You're allowed to say "Yes, we hear it."

The Chair: Carry on, Ms. Sims. I don't know what that was.

Ms. Jinny Jogindera Sims: As is, except when we—

The Chair: On a point of order, Mr. Giguère.

[*Translation*]

Mr. Alain Giguère: I just want to say that the people at the back don't have a copy.

[*English*]

The Chair: They don't have copies.

Ms. Jinny Jogindera Sims: That is why I am going to be reading.

The Chair: Let's see what she does. We'll wait anxiously.

Ms. Jinny Jogindera Sims: It's two words.

The Chair: If it's long, we'll have to have it printed out.

Ms. Jinny Jogindera Sims: Yes, we will. Okay, Chair.

So (a) and (b) remain the same, those two lines. Then when you get to (2), where it says "may", "The Minister may", change that word to "shall". Delete "on the Minister's own initiative". Change 16 to 18. Delete "in the Minister's opinion" and insert at the end of that sentence "as set out in paragraphs 58.1(a) to (c) and (e)."

Did people want me to go over it again?

The Chair: That's all, or is there anything else?

Ms. Jinny Jogindera Sims: No, that's it.

The Chair: The chairman is satisfied, unless someone else wants it printed out.

Go ahead.

Ms. Jinny Jogindera Sims: Once again, I do want to acknowledge the movement made by the minister and my colleagues across the way, and the fact that they heard not only from the opposition but from the expert witnesses, the myriad number of them, the concerns that were raised here.

The attempt with this is to actually assist the minister to be able to carry out his role in this so that it is absolutely explicit; it's not just left to his opinion. For example, I never like the word "may" in many situations, because what we're saying is, really, that people are released when no grounds for detention exist, and we've acknowledged that there are in 58.1(a) to (c) and (e), which has already passed, that those are the reasons why you would detain people. But once those reasons don't exist, then you're released. Therefore, in that third sentence "in the Minister's opinion" is not really needed, because what's really needed is to refer back to the reasons they were kept in detention. I think that's a much better way to write language when we're working on a bill.

The other one right at the beginning, to go from "may" to "shall"...I can say that if were a minister, I would want that to read "shall", because if we've said the only reasons we're going to keep people in detention are these four reasons, then it's my responsibility to make sure that they are released. I think the word "shall" captures what I believe was the intent, which is not to detain people once the reasons as stipulated in 58.1(a) to (c) and (e) no longer exist.

Once again, Chair, we are supporting this amendment, though we are fundamentally opposed to the motivation and also to the reasons behind this piece of legislation, and we are opposed to designating foreign nationals into two tiers, and we are also opposed to mandatory detentions. However, we do realize and acknowledge that when people arrive without identity, there is the need to establish identity, to verify and to ensure that 58.1(a) to (c) and (e) are met.

So those are the changes we're seeking. I would really like to go for lunch with my colleagues across the way having supported at least one of our amendments unanimously, as we have been so generous and supported theirs. When they make a move in the right direction, we want to acknowledge that. I'm hoping my colleagues will do the same.

● (1130)

The Chair: Mr. Weston, and then Mr. Dykstra.

Mr. John Weston: I just want to acknowledge my colleague's acknowledgement.

Ms. Jinny Jogindera Sims: It's getting to be a real love-in.

Mr. John Weston: I think the important thing here is that you have the minister, who stands for people like Aung San Suu Kyi, who stands for Chinese dissidents, and who has been an advocate of the Office of Religious Freedom, hearing the issue on detention and making sure that the bill reflects his need to do so.

That was my point, in fact, before my colleague raised her subamendment.

Thank you.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I just have three quick points, Mr. Chair.

While I actually think the member did a pretty ingenious job of reworking our amendment, I compliment her for that, but I do want to acknowledge three things.

First, the difficulty is that the change forces the minister to act versus allowing him to act. I think that's a critical part of this. The amendment would give the minister the ability to act. It now would force him or her to act.

That leads to a second problem, which is that the minister of the day may have a specific reason to not act on this part of the bill if it's not in the best interest of Canadians or not in the best interest from a protection perspective.

Let me take that a little bit further, which is my third point. If the minister is forced to act and release someone, and that individual does something illegal and the questions arise as to why the minister allowed this individual to be free from detention and then this criminal act occurred, the minister's response can only be, “Well, I was forced to act because of the legislation.”

It behooves all of us, and I think it's more incumbent upon the minister who is in that position at the time, that there is ultimate responsibility that falls with the decision-maker versus looking to the legislation as either protection or as a fault. If someone were to be released, based on how this would currently be worded, as per the NDP amendment, it puts all of us as government members, regardless of which party we're in, in a vulnerable position based on what the legislation would say. It even puts the minister in a much more vulnerable position, because despite what the minister may believe to be in the best interest of Canadians, the minister is actually forced to act based on what this piece of the legislation would say.

I hope I've made it clear. We won't be supporting the subamendment. We believe the amendment the government proposes actually allows for everyone to see that the availability of implementing this option is available to the minister and it's in the legislation, but that we still grant the minister of the day the opportunity to make that decision on his or her own.

The Chair: Thank you.

Ms. Sims.

Ms. Jinny Jogindera Sims: By the way, our attempt in this was not to put the minister in some kind of box or to make him more vulnerable. God forbid. At the same time, I cannot imagine a minister saying that we're going to be keeping people in detention. I don't think that was the minister's or your intention either, if (a) to (c) and (e) have been met, because if they're a threat to the nation, they're going to be captured in (a) to (c) and (e). We're only saying that if the reasons for the detention no longer exist. So if there is a problem with our wording—and I'm not a technician—and you feel that a different wording would get to where we're trying to get to, I would like to work with you to get us there.

I've heard your comment about not wanting to make it mandatory for the minister, but I think at the same time you don't want to leave language like “in the Minister's opinion”, because I would say that any reason why a minister would want to keep somebody in detention is already captured in (a), (b), (c), and (e). If we're saying that they are the only reasons people are going to be detained, and it's the government language that has said that, then surely, when none of those reasons exist, we have to have that tied to that rather than to any minister—and I'm not saying this minister; I'm saying any minister's, current or future, opinion. We don't keep people in detention because of opinions; we keep people in detention because we've articulated the reasons why they are being detained. They are very clear in (a), (b), (c), and (e). If you like, I can read them out to you, but I'm sure you've memorized them as well.

I'm looking for assistance here, Chair, from my colleague across the way, because I think he understands the point I'm trying to make. We are not trying to box in the government with this. I'm not a lawyer. I'm not sitting here trying to find a back door. I'm just trying to be very explicit as to the reasons for detention. The reasons for being released from detention should be parallel.

● (1135)

The Chair: Go ahead.

Mr. Rick Dykstra: Perhaps it would be helpful to have.... I think at the end of the day, I would like to get an opinion on how taking out the four words “in the Minister's opinion” impact the amendment.

Ms. Jennifer Irish: I'll ask Mr. Kagedan from Public Safety to respond.

Mr. Allan Kagedan (Director, National Security Operations, Public Safety Canada): Thank you.

This provides the minister with the authority to act at any time with respect to releasing an individual. Once you satisfy those other criteria, it could happen at any time. It essentially establishes that if there are no reasons to detain, the person need not be detained, and there's no time limit on it, not even the 14 days. As a matter of practicality, you would think that you'd need a bit of time to establish identity and to go through those other things, but it actually permits great latitude to the minister to do that.

I guess as well, when you structure something based on a minister's opinion or that kind of thing, what you're doing is...you're not in a situation where some other body would have to make a decision that would tend to be a review where another body makes a decision.

Generally speaking, as I understand it, in situations of a minister's opinion, it allows that flexibility outside of another process to have to determine when those conditions are met. As I say, there would be no minimum time that would be set down for detention because the minister could act proactively at any time.

The Chair: Go ahead, Ms. Sims.

Ms. Jinny Jogindera Sims: The question that I heard Mr. Dykstra ask was if in that last line, in (2), the four words "in the Minister's opinion" were removed.... Right? So it would read:

> years of age or older on the day of the arrival, that is the subject of the designation in question [if] the reasons for the detention no longer exist.

Then we wrote in there "as set out in paragraphs 58(1)(a) to (c) and (e)".

I really would urge my colleagues across the way, even if they need to take a slight recess, or maybe we could come back to this after lunch.... We could always leave this particular clause aside, because I don't want us to make hasty decisions. I really want you to go away and think about this and see that "in the Minister's opinion" in this case is not needed when the reasons for the detention no longer exist. Then let's stipulate what those reasons are, once again for clarity's sake, so that everything is there when somebody reads it.

● (1140)

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Actually, my perspective on this has tightened. Mr. Kagedan has done a good job clarifying for me the importance of leaving the aspect of "in the Minister's opinion" in, but I wouldn't mind getting a follow-up perspective from him. I think he has one.

Ms. Jennifer Irish: I'm actually going to ask Scott Nesbitt to come in on the difference between the "may" and the "shall" and what impact that has.

Ms. Jinny Jogindera Sims: We're actually all right on that. Now we're talking about "in the Minister's opinion" on that last line and then putting out "as set out in paragraphs"—that part.

The "may" and the "shall" I acknowledged with Mr. Dykstra. We would like "shall", but I heard his point.

Could we move to defer until the afternoon on this particular one?

Mr. Rick Dykstra: I'm prepared to listen if Mr. Nesbitt has a comment, but while I acknowledge your intent, I do think the amendment does what it's supposed to do in terms of giving the minister some prerogative, while at the same time ensuring that the first principle of the amendment or of the clause is that the decision-making process rests with the ministries versus with the particular minister.

I think this gives us an additional piece, but I am convinced that it should stay as is. I'm certainly prepared to hear Mr. Nesbitt's point.

Mr. Scott Nesbitt: I'll make two points that I hope will help clarify the wording a little bit and why those particular words are used, Mr. Chair.

The first is that the wording of the proposed amendment is, you'll notice, almost verbatim the same as the wording of the existing section 56 in IRPA. Section 56 of IRPA gives authority to an officer, rather than the minister, to release somebody from detention before the immigration division starts its detention reviews for the normal run—the normal detention scheme, not the Bill C-31 detention scheme.

The same wording there is used: an officer may order the release of an individual where the officer is of the opinion that the reasons for the detention no longer exist. The reasons for detention—that wording is understood to be the reasons for which the person was first detained. One of the reasons is in 58(1)(a) to (d), as we've referred to before.

The particular "of the opinion" wording is used throughout IRPA where there's a legislative intention to ensure that the minister's decision is given a greater degree of deference than perhaps may otherwise be the case.

So it is not that a tribunal or a court reviewing that decision objectively decides for itself whether those reasons for detention exist, but rather looks at whether the opinion of the minister is reasonable. It's a slight difference, and it really has to do with the deference to the minister's view when that decision is being reviewed by a subsequent body.

The Chair: Are you finished?

Ms. Jinny Jogindera Sims: I've stated my position, Chair.

The Chair: We're dealing....

I'm sorry. Ms. Sitsabaiesan.

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

We know that paragraphs 58(1)(a) to (c) and (e) clearly articulate the possible reasons for a detention. Here in the release clause, which is what I'm going to call it, it makes sense to clearly articulate the grounds.

As far as I understand it, nowhere does it say why you're being released or why you cannot be held any longer in detention. If the conditions of the detention, which are as outlined in subsection 58 (1), don't exist any longer, then there's no reason for a detention.

I think it makes sense. It gives strength and clarity to know these are the reasons that you are not being detained any longer. That's our intent. That's why we're trying to insert it in here, because it makes sense to have that added clarity in the legislation.

That's all. Thank you.

● (1145)

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: I'll make a quick point. This is a question for Ms. Sims.

In listening to the explanation, the question I would have is, if you put it into a position in which the minister has to release the person because the refugee claimant no longer meets the requirements for detention purposes, then you're obligating the minister to release the person. Why would we allow the minister to make that decision as opposed to the local civil servant or border control staff? If there is no discretionary authority, and a refugee no longer is required to be kept in detention because of the legislation, why would it advance to the minister? I'm not quite clear on that point.

Ms. Jinny Jogindera Sims: Let me make it very clear. We would prefer it if there was no detention. We also tried amendments to say that once these things had happened, the person would be released automatically. None of those made muster. Right?

We were told before that all of this would be stipulated in regulations. I think what the government has done in this case is it has put into the actual legislation that the minister would be taking a look at this and could release people at any time, as long as the reason for the detention no longer exists.

It's because of that that we supported this. We tried to make it stronger. I still live in hope that this amendment will carry.

The Chair: We have a subamendment, which is an amendment to the amendment by the New Democratic Party.

(Subamendment negatived)

Ms. Jinny Jogindera Sims: My heart breaks again.

The Chair: We are back to the government amendment. Is there further debate on the amendment?

(Amendment agreed to)

Ms. Jinny Jogindera Sims: With great reluctance.

The Chair: Everybody happy?

(Clause 27 agreed to on division)

An hon. member: So melodramatic

Ms. Jinny Jogindera Sims: On a point of order, Mr. Weston, the day I have melodrama, you will know it. You haven't seen melodrama until you've experienced it in my presence.

(On clause 28)

The Chair: We're now on to Liberal amendment 27.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I move that Bill C-31 in clause 28 be amended by replacing line 8 on page 15 with the following:

> who was 18 years of age and older on the day

(Amendment negatived)

The Chair: New Democratic amendment 15.6 is a duplicate.

(Clauses 28 to 31 inclusive agreed to on division)

(On clause 32)

The Chair: Mr. Lamoureux.

● (1150)

Mr. Kevin Lamoureux: Mr. Chair, I'd like to quickly add some comments on clause 32. Why is this reporting mechanism that's being put in place forcing designated foreign nationals who receive refugee status to report to an officer, especially on conditions that are really not clear because they will only be known through regulations?

I wonder if the officials or the government representative will speak to what sorts of conditions are going to be imposed and the rationale behind making those refugee status reports. I'm a bit unclear on that point.

Ms. Jennifer Irish: The intent of the amendment is that for the five years between which one is a protected person until the time they can apply for permanent residency, there'll be a requirement that they periodically report to an officer. That period will be established in regulations as one year.

Mr. Kevin Lamoureux: What is expected of them to report? Is there any indication of that? What do you want to know?

Ms. Jennifer Irish: The intent of the report is mainly to determine that they are still at the address they filed when they received their protected person status. So it's in part just to keep track of their whereabouts in Canada, and that they have continued to reside at the address they have registered, to ensure accountability.

Mr. Kevin Lamoureux: So in essence we're going to say, “You're a refugee. You are allowed to leave the detention centre now, but we want to know where you are for the next year.” That is what we are looking at in terms of regulation, and they have to report where they are.

Ms. Jennifer Irish: The person is a protected person in Canada with status, and there will be a requirement that they report at the one-year interval.

Mr. Kevin Lamoureux: Other refugees, normal refugees, wouldn't be required to report.

Ms. Jennifer Irish: Other protected persons would not be covered by the reporting requirement.

Mr. Kevin Lamoureux: Okay.

It's one of the reasons we're not supporting it, Mr. Chair.

Thank you.

The Chair: Is there any more debate on clause 32?

Mr. Kevin Lamoureux: I guess it's too late to ask for a recorded vote. That's okay.

(Clause 32 agreed to: yeas 6; nays 5)

(Clauses 33 to 35 inclusive agreed to on division)

(On clause 36)

The Chair: Ms. Sims, on clause 36 you have amendment NDP-16.

You may address the committee.

● (1155)

Ms. Jinny Jogindera Sims: It's a fairly straightforward amendment and pretty much self-evident. Here, we are replacing line 9.

Just give me a moment to catch up with my paper. You're moving through this at a very good speed, Chair.

You see, if I praise the chair while I'm looking for my papers, he might even give me a minute to get there.

The Chair: Flattery will get you nowhere.

Ms. Jinny Jogindera Sims: This amendment actually expands the evidence that is admissible on appeal, from evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not have reasonably have been expected in the circumstances to have presented at the time of rejection, to "additional evidence that was not before the decision-maker at the time" of the rejection of the claim. The latter is broader.

As I have people running around me, I'm wondering if I am on the right amendment. Is it 17? No? It's 16? I actually gave the wrong rationale. I do apologize.

Now, for the record, I have the right rationale. The amendment here reinserts access to RAD for all six decisions that are excluded, including RPD decisions, redesignated foreign national applications, a determination that a claim has been withdrawn or abandoned, and RPD decisions that the claim is rejected for being not credible or manifestly unfounded, on application by the minister, on the principle that an appeal is a necessary component of procedural justice.

In the years when I taught law classes—I'm not a lawyer—one of the things I used to say to students is that a critical part of our legal system is that it's not over until you've been through all the appeal processes. So the importance of appeal is really critical when you're looking at the rule of law and when you're looking at fair justice, because everybody should have the right to come and defend themselves and to present other information.

On Wednesday, May 2, at 3:46 p.m., Andrew Brouwer was actually very eloquent when he said:

> A number of years ago some members of this committee may remember there was the case of Kevin Yourdkhani and his family.

I don't, by the way.

He said:

> They were Iranians. They too had come from Iran to make a refugee claim. They failed, they were deported, and their documents were handed over, again, to the flight crew.
>
> On arrival in Tehran, Iran, their documents were given to the authorities there. Both Majid and Mosomeh, husband and wife, were detained and tortured and abused for months—again, interrogated because they had made an asylum claim in Canada.

It really becomes critical that we give every opportunity for people to make their case in as fulsome a way as they can.

Thank you.

The Chair: Is there further debate on amendment NDP-16?

Mr. Weston, and then Monsieur Giguère.

Mr. John Weston: I just want to confirm that I recall that testimony very clearly. It's a haunting story.

It's indeed why we have to make sure that there are appeal procedures. This approach that is reflected in Bill C-31 does allow for internal review and at the same time accords the human rights that those who are legitimate applicants need, by speeding up the whole system. I acknowledge the concern raised by my colleague in that very haunting story and say that we have balanced those concerns against others in the bill.

The Chair: Monsieur Giguère.

[*Translation*]

Mr. Alain Giguère: My colleague might think section 36 is balanced, but, based on procedural justice, it is actually not. We are talking about a right to appeal. The right makes it clear that it does not have to do with authorization or exclusive power, but that it is a right. With a procedural right, you cannot grant or deny a right willy-nilly.

On that note, as a member of the Barreau, let me remind you that all the stakeholders from the Canadian and Quebec bar associations have said and stressed that the right to appeal is fundamental. It is the *audi alteram partem* rule.

Furthermore, the Singh case points to section 7 of the Canadian Charter of Rights and Freedoms:

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

And the right to appeal falls under fundamental justice.

Section 2 of the Canadian Bill of Rights says the following:

> ...no law of Canada shall be construed or applied so as to... deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

Those texts did not fall out of the sky; they are Canada's legal reality. And I urge you to pass the amendment, which is consistent with those legal rules. The right to appeal is fundamental. It is an instrument that says that an individual has the right to a second chance if, during the first hearing, legal rules were violated, facts or evidence should not have been accepted, or new events have occurred and new evidence has come to light since the first hearing. That does not mean that a large trial would be held. It means that the individual has something to say that needs to be heard. Will that change the ruling? That will be up to the judge. But the person has that right. The whole Canadian law rests on *audi alteram partem*. We have the right to be heard.

I don't see why you are questioning something as fundamental as this principle. Our amendment is not going to revolutionize your bill or alter it significantly. It is simply going to take something out that should not be there in the first place. That is all.

Thank you.

● (1200)

[*English*]

The Chair: Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: Thank you, Mr. Chair.

[*English*]

The Chair: Excuse me, Madame Groguhé.

Ms. James, on a point of order.

Ms. Roxanne James: I'm just wondering if this clock is wrong or if my BlackBerry is wrong. I have another commitment right at 12 and this committee is supposed to end right at 12. So I just wanted clarification on that.

Thank you.

The Chair: She won't be long.

Go ahead, Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé: We talked about fundamental rights and natural justice. The right to appeal falls under that. In fact, appeal is a right that allows judges to fix potential errors in decisions that affect the lives and rights of individuals. That is why it is important.

Refugee claimants in Canada appear before one single decision-maker, who has to determine whether they need Canada's protection or whether they are eligible for that protection. That decision rests with one single person, who decides the fate of an asylum seeker. Should an error occur at the eligibility stage, the asylum seeker will not be able to appeal on the merits of the decision.

But as we all know, it has been demonstrated that difficult decisions had to be made in immigration and that not all decision-makers make decisions in the same way. So some are in favour, some are not, and some can even be completely incompatible, because one or other decision-maker was subjective.

Actually, those rulings can sometimes be inconsistent. In addition, asylum seekers are often poorly represented and immigration decision-makers are not infallible.

The fact that there has been no appeal division until now is already a violation of the principle of the rule of law. Parliament passed a piece of legislation providing for an appeal division for asylum seekers on the merits of their case and it has not been implemented. That is also a violation of the rule of law to a certain extent. It is important that this amendment be passed.

Thank you.

● (1205)

[*English*]

The Chair: In answer to your question, Ms. James, it is 12:05 p. m. by the chairman's clock.

Ms. Sitsabaiesan wishes to speak, but we will come back. We still have to deal with NDP-16 and Ms. Sitsabaiesan will have the floor.

We will adjourn, and we will see you at 3:30 p.m.

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