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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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• (1530)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): This is the Standing Committee on Citizenship and Immigration, meeting number 45, on Thursday, May 11, 2012. This meeting is televised.

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

We are in the midst of debating amendment NDP-16. Ms. Sitsabaiesan has asked for the floor, and she has it.

(On clause 36)

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Chair, I have a point of order, a procedural question. I need some guidance from you.

I have a motion that I would like to put on the floor, and I'm wondering whether I should wait until this particular clause is finished and then move it or whether you would prefer that I move it now.

The Chair: I don't know.

A voice: We already have a motion—

Ms. Jinny Jogindera Sims: So we'll have to wait until after the clause.

Thank you.

Let me say that I will be moving it straight after this clause.

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

With respect to amendment NDP-16, Mr. Chair, I believe the emphasis has to be placed on the importance of the right to appeal in our immigration system. The establishment of the Refugee Appeal Division, the RAD, is a welcome step in the refugee determination system, and it takes its creation from Bill C-11.

We've heard from many witnesses that unfortunately mistakes can be made at the IRB. We heard that an unintended consequence of the expedited claims is that more mistakes may be made. Also, new information may come to light, and without access to the RAD, the Refugee Appeal Division, this information may not be allowed to be heard. The consequence of these negative decisions can be someone's life. The RAD is a precautionary safeguard, and it is for this reason that this bar is dangerous.

We have said time and time again that an asylum seeker's mode of arrival should not determine how we treat them. Mode of arrival, how somebody comes to this country, shouldn't designate them as a second-class refugee. A mode of arrival has no bearing on mistakes that can be made in the determination process.

A judicial review is unfortunately not good enough for this, as new facts may come to light. We need to ensure that there is an accessible safeguard mechanism in place to remedy any error. This bar undermines our international obligations to refugee claimants.

The Refugee Appeal Division should be accessible for all types of claimants.

Thank you, Mr. Chair.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: Chair, as my colleague has just articulated, this particular bill, Bill C-31, denies access to an appeal to the RAD for negative refugee decisions for a very lengthy number of groups, and I just want to read those into the record: claimants from a designated country of origin; designated foreign nationals; those who have withdrawn or been found to have abandoned their claims; claims that the RPD determines have no credible basis or to be manifestly unfounded; claimants who entered Canada from a safe third country but who could claim refugee status because they fit an exception to, let's say, the Canada-U.S. agreement; and claimants whose refugee status was revoked after vacation or cessation hearings.

The Chair: Mr. Lamoureux.

• (1535)

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Mr. Chair, before any other motions are put in regard to Bill C-31, I want to get on the record the amendment we're now talking about. In the past, we, as a political entity, have expressed our concern that refugees, or people applying to become refugees, even if they're from a safe country, be provided some reasonable opportunity of appeal.

What the government is proposing to do, in essence, is to say that technically a refugee's only appeal is the Federal Court, which raises a great deal of concern with a wide variety, if not all, stakeholders. For that reason, I think the government would be making a mistake by going into an area where an individual's only recourse for a decision made is to take it to the Federal Court. We know that at times the Federal Court, in itself, can be a fairly lengthy process, anywhere from three months to over a year. Unless we amend the current legislation, Mr. Chairperson, the individuals seeking an appeal will not even be in the country at the time their appeal is being heard.

I'm sure members can appreciate the concerns stakeholders would have, for the simple reason that there's always been this sense of justice that someone going through an appeal have the opportunity to be in the country, at least until that final determination is read or given. It's a serious concern we have.

With that in mind, whether it's the NDP amendment or amendments from the Liberal Party attempting to deal with that issue, those are my comments for committee members.

Thank you.

The Chair: We're dealing with NDP-16.

(Amendment negated)

The Chair: LIB-27.1.

Mr. Lamoureux, go ahead.

Mr. Kevin Lamoureux: Mr. Chair, did you want me to read this in verbatim or can I just—

The Chair: No, no.

Mr. Kevin Lamoureux: No? Okay.

The Chair: Unless you want to. We don't have to, though.

Mr. Kevin Lamoureux: No, everyone has it—

The Chair: We do.

Mr. Kevin Lamoureux: —and they can read through it.

In essence, it gives an appeal to all applicants, except for those who would withdraw or abandon their claims. The idea is that individuals should have the ability to have, and feel that they're being given, due course and a form of natural justice that ultimately allows them to receive a final determination while they're actually here in the country.

I would encourage members to support this amendment.

The Chair: Ms. Sims, go ahead.

Ms. Jinny Jogindera Sims: Chair, I will be supporting this amendment.

This amendment goes to one of those fundamental beliefs and laws that we believe in, and that is the right to justice. The appeal process is part of that. The wider amendment did not carry. We hope this one will.

The Chair: We're going to vote on LIB-27.1.

(Amendment negated)

The Chair: LIB-27.2.

Mr. Kevin Lamoureux: Mr. Chair, I move that Bill C-31 in clause 36 be amended by replacing line 13 on page 17 with the following:

or on the basis of humanitarian and compassionate grounds, to the Refugee Appeal Division against a

Mr. Chairperson, this would allow for an appeal on humanitarian and compassionate grounds if a person is denied refugee status. We believe it's important for those claims that are more meritorious on those types of grounds. The idea of having a 12-month delay in

being able to apply for humanitarian and compassionate grounds just seems not to be appropriate or in keeping with Canadian tradition.

● (1540)

The Chair: Mr. Dykstra.

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

The government obviously didn't support the last amendment; it won't support this one.

I do find it rather interesting to see Liberals move an amendment to increase the RAD when in fact when they moved the legislation originally back in 2002, they didn't implement the RAD, which was in the legislation. So I do find it kind of interesting that they had their chance to move this, and countless thousands of those who could have taken advantage of it I'm sure would have. Now they're arguing that we're not going far enough with something that they wouldn't implement in the first place.

It's just interesting; it's a comment for observation.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: On that point, Mr. Chair, you could say this was fairly new legislation coming in back in 2002. I'm sure, given that the Liberals tend to be much more open-minded than Conservatives, we would have been able to see some movement in this area in the years that followed.

Mr. Rick Dykstra: If we had just had one more year, that would have happened, right?

Mr. Kevin Lamoureux: That would have been it, quite possibly.

The Chair: We're voting on LIB-27.2.

(Amendment negated)

The Chair: LIB-27.3.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I would move that Bill C-31 in clause 36 be amended by replacing line 20 on page 18 with the following:

Division, and must accept documentary evidence

The essence of it, Mr. Chair, is just to allow for new evidence that would be acceptable in the appeal process.

The Chair: We're voting on LIB-27.3.

(Amendment negated)

The Chair: NDP-17.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you, Chair.

I think you might have heard some of these words before. This amendment allows for additional evidence to be presented on appeal so that people can have their cases reviewed in a very thorough manner. It expands the evidence that is admissible on appeal from evidence that arose after the rejection of their claim. You've got to look at it that when a lot of these people first come in, the new asylum seekers, they're not going to have everything with them straightaway. For some of them, it's going to take time to gather all the evidence, all the materials, even identity.

On the risk issues, I was talking recently to a couple of people from a gay and lesbian community who have been granted refugee status here from Mexico, and they told me how long it took them to get all their evidence together before they could present it. This actually allows for that kind of admissibility.

A person could not have reasonably had time to make the presentation at the time of the rejection because they weren't able to get things from the country they were escaping from. Many of our asylum seekers who come here may not necessarily come directly from their home country. They might already have been in camps or in other situations in other countries at the time. It also allows them to present additional evidence that was not before the decision-maker at the time of the rejection of the claim. It's like taking another look.

This is a little bit broader than I know the original was, but that is the intent, and I'm really hoping this will be accepted. It's a very reasonable amendment we're putting forward, in light of the fact that here we are talking about the asylum seekers who will be designated as irregular arrivals—not that we believe in the designation. The very fact that they may not have identity on them and the fact that it will take time to verify...this is why we need to at least give them this opportunity to be able to present the new information they have gathered.

• (1545)

The Chair: Go ahead, Mr. Giguère.

[Translation]

Mr. Alain Giguère (Marc-Aurèle-Fortin, NDP): This section puts things in place. If you want to appeal, you need new evidence, something that can reverse a ruling. If we don't give people the material opportunity to present evidence, any right of appeal is meaningless. It would simply be a repeat of the first decision. You need new elements.

I don't think I need to tell you that, in Canada, it is difficult to find a medical expert to determine the nature of psychological injuries or to establish whether physical injuries are the result of torture. That can take a long time, and we need to provide that time.

We are talking about the right to appeal. An appeal means that a court of first instance has already ruled on the evidence. You appeal because the ruling was not in your favour or because the evidence was not deemed satisfactory. So you have to give more teeth to the evidence. The sole purpose of this amendment is to give people a real opportunity to present that evidence. Those people have to appear before a judge with evidence that is different from the evidence in the first trial. Otherwise, the ruling would end up being the same, and that is not what you want. We are not trying to get rid of a hot potato, but we want to listen to what people have to say and to what has not been heard in the first trial. That is the principle of an appeal.

Many of my colleagues have a background in law. An appeal quite often has to do with introducing new evidence. Without the material resources and the time to produce that evidence, the right to appeal rings hollow. That is basically what is happening. We don't want to come back in September with the same bill on our hands because a judge deemed it *ultra vires* since it was infringing on the rights and freedoms to such a great extent. Unfortunately, there is a danger of that happening.

The Canadian and Quebec bar associations, the most prominent legal experts and even some of your witnesses have told us that, although the spirit of this legislation might seem interesting at times, it would be deemed unconstitutional. Pretty much everyone said so. So we are going to pass a bill that might suit your needs from an ideological point of view, but its lifespan is going to be very short from a legal point of view. One of the factors affecting the lifespan of the bill is the right of appeal that ends up being meaningless because the witnesses and the main claimants are not provided with sufficient time to gather their evidence.

Thank you, Mr. Chair.

[English]

The Chair: Is there any further debate on NDP-17?

(Amendment negated)

Ms. Jinny Jogindera Sims: Chair, before you put the next clause on the floor, I have a motion that I have given notice of.

The Chair: We're in the middle of a vote here.

Ms. Jinny Jogindera Sims: Sorry.

(Clause 36 agreed to on division)

The Chair: Go ahead.

Ms. Jinny Jogindera Sims: Chair, I have a motion. It has been given to the clerk.

I move that the Standing Committee on Citizenship and Immigration immediately commence a study on the subject matter of sections of Bill C-38, An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012, and other measures that directly fall within the mandate of this committee, namely part 4, division 54, of the Immigration and Refugee Protection Act.

May I open? As you know, Chair, the House of Commons is facing an extraordinary situation—

• (1550)

The Chair: Ms. Sims, the only problem is that the order before us now says we're debating Bill C-31. The order is quite specific on what we're doing. The hours we're spending—every second—are supposed to be spent on Bill C-31. That motion you have just introduced says that we start on this immediately, which would contradict the motions before this committee now.

I'm interested in hearing comments from other sides, but it just seems to me that it's contradicting the motion that is before the committee now, which says not only must we deal with Bill C-31 now, but it spells out the hours during which we are supposed to deal with Bill C-31.

Ms. Jinny Jogindera Sims: I may be able to help clarify that, Chair.

Our intention was to finish doing what we are committed to doing today. But when we reconvene next week, we would start that.

Our intention was not to interrupt the clause-by-clause today, because that's critical work we have to get done.

The Chair: I'm reluctant to deal with this motion now.

You're interrupting. We have people from the department here. We've been doing this for six hours a day for the last two weeks, and out of the blue you come up with a motion to deal with another bill.

Ms. Jinny Jogindera Sims: We gave 72 hours' notice, Chair. It did not come out of the blue.

Mr. Rick Dykstra: Chair, on the government side, we will not be speaking to this motion, but we will be voting no. That may give you a little more discretion as to how long we'll be talking about this.

Ms. Jinny Jogindera Sims: Chair, if it helps, once I've made all the points, we'll have just me speaking.

The Chair: Well, you know, now that Mr. Dykstra has said that...

I will say that you have spent a great deal of time saying that you don't have enough time to deal with Bill C-31, and all of a sudden, you're interrupting the proceedings to deal with an entirely different bill.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chairperson, I'm inclined to be sympathetic to what it is you're saying. Normally I might not say this, but the concern I have is that we had an agreement that this bill, Bill C-31, would pass today. That's the mindset I had come into committee with.

Having said that, I share many of the concerns the NDP have with regard to the budget debate. I suspect that this is where this is coming from.

I could also say that had I known we were able to make these types of motions today, there are many other issues.... For example, I'd love to cease and desist the current study the immigration committee is doing on biometrics and then explain why. We should be having that discussion about what we replace it with. This is a legitimate concern. There are legitimate concerns with regard to the crisis situation in the provincial nominee program. We have serious issues related to visitor visas not being approved.

It's a fairly lengthy agenda we could have. I would love the opportunity to welcome into the debate all those issues.

My concern is that if the member starts to itemize the reasons we should be making this a priority, I would feel somewhat obligated to itemize what I believe, on behalf of our party, are priorities for this committee to be looking at.

What we might want to do is deal with Bill C-31. If there is some time at the end of that discussion, and the committee is open to it, I too would like to introduce some motions for us to look at as a committee.

The Chair: I can tell you what this committee has normally done in the past and what I plan in the future.

When we finish one project, we generally meet as a subcommittee and plan what we're going to do in the future. There are all kinds of things. We debate what items we're going to.... It could be those items. The government may have some suggestions. The official opposition may have some suggestions. They have one now.

We were going to meet next week, as a subcommittee, to plan where we're going in the future. So I'm at a little bit of a loss.

You are, in a way, contradicting your whole approach to Bill C-31. You have complained that we're not having enough time, and now you appear to want to debate a motion on Bill C-38.

The government has indicated that it's not going to support your motion.

Quite frankly, I would prefer that the topic be left until we meet as a subcommittee. I first of all want to meet with the analysts and the clerk to hear what they have to say about the report we've been working on and to prepare a report for the subcommittee on their suggestions and some of the topics that have been raised in the past. That would take place next week, as opposed to now, in the middle of the time scheduled for dealing with Bill C-31.

• (1555)

Ms. Jinny Jogindera Sims: Excuse me, Chair.

The Chair: You go ahead.

Ms. Jinny Jogindera Sims: Chair, I'm not talking about a long-term study. We've got a budget going before the House that has significant sections in it that pertain to the work of this committee. I'm not saying that the whole budget bill should come here. The only bit I want us to be able to examine in a relaxed manner...and I agree with Mr. Dykstra, this is the place where we get to do some of the real work, where we get to explore and see where there are problems and try to find solutions together.

This is not something I can leave for another week or two or three because of the way time allocation has been moved on the budget. So what I'm looking for is not that we should stop everything today, but when we come back into this meeting Monday or Tuesday, we could start taking a look at the parts of the budget that are directly related to immigration, to our work.

I have no time to be saying let's bring the whole budget here. That belongs somewhere else. There's a finance committee to take a look at that side of the budget. But in that budget, even on my very brief reading, there are elements that I feel are the purview of this committee to discuss. All I'm asking is for some time to do that.

Mr. Kevin Lamoureux: Mr. Chair, I think we're walking into a dangerous area. If you take a—

The Chair: I've got Mr. Menegakis and then you.

Mr. Costas Menegakis (Richmond Hill, CPC): Mr. Chair, if I may, of course the ultimate decision on how we proceed in this committee is yours, but we are here discussing Bill C-31. I concur with your comments that we have a job to do here today.

I've also been in agreement with the practice of the committee: the subcommittee meets and discusses what's to be studied next. We are studying security. We've met with a lot of witnesses. I'm sure much more work needs to be done on that. To leave that study now and do something else will be discussed in the subcommittee. But to continue to have this discussion today on what should happen next, without finishing the job we have at hand....

We're on clause 36 of some 85 clauses. I think we should continue doing this job right now to finish our task today, and then by all means, the honourable member's suggestion can be reviewed by the subcommittee and discussed among.... We have confidence in the subcommittee. As a committee, we've demonstrated that. The subcommittee can decide on how we proceed, bring it to us, and then we'll go forward.

But to interrupt this meeting now.... I'm sure that wasn't Ms. Sims's intention, by any stretch of the imagination. I don't think she wanted to interrupt it, but that's the result. We're in the middle of something. We should be finishing the job at hand right now before we go to the next thing. The minute we start talking about time allocation and the budget, we would have to say all kinds of things about that as well, and we're going to go on forever with that. For sure we're in total disagreement with some of the tactics being used by the opposition, but this meeting is not the place or the time for it.

We are at the end of a marathon discussion on Bill C-31, having heard a plethora of witnesses. I admit a lot of work has been done by all parties here, with the amendments that have been put forth. We're going through clause-by-clause consideration.

Just to finish up, without being repetitive, I think we should finish our task at hand, and then the subcommittee can evaluate what we do, if they want to change the process of how we proceed.

That's my point. Thank you.

• (1600)

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I suggest in good faith that after we've dealt with Bill C-31—and we might be able to deal with it relatively quickly—maybe the steering committee could have an in camera meeting to address the concerns of not only the NDP but the Liberal Party and I'm sure even the government members.

I wouldn't necessarily want to jump to any conclusions. For example, Mr. Chair, we in the Liberal Party believe we should have seen a separate, stand-alone piece of legislation, as opposed to our dealing with this issue through the budget. That's why I think it's probably better if we have that discussion immediately following Bill C-31, if possible, depending on what time we finish.

I don't think there's a need for any sort of a vote now. Let's just deal with Bill C-31. After that, let's have this discussion, and maybe the steering committee could get together. Things seem to be moving along quite nicely right now.

That would be my recommendation.

The Chair: Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Mr. Lamoureux, I think that's the first time I've agreed with you.

I was just going to remind everyone on this committee that we have several guests here, officials, who are here for the purpose of Bill C-31, and we still have a lot of amendments and clauses to go through before the end of the day.

I know we're scheduled right up until, I believe, midnight tonight. I would suggest that perhaps we could postpone it until that point in time, and I'm sure we could go in camera and decide if we want to

discuss that any further, once this committee has finished at midnight.

Thank you.

The Chair: There's a motion on the floor. All in favour of the motion?

(Motion negated)

(Clause 37 agreed to on division)

(On clause 38)

The Chair: Mr. Dykstra, you have government amendment number 5.

Mr. Rick Dykstra: Yes, thank you, Chair.

We have another clarifying amendment to make, and basically as was submitted, the amendment to 112(2)(b.1) provides that a person may not submit a PRRA application if less than 12 months, or 36 months for those persons from a designated country of origin, have passed since their claim for refugee protection was last rejected or determined to be withdrawn or abandoned by either the Refugee Protection Division or the Refugee Appeal Division.

Ostensibly, Mr. Chair, we're just adding the “or 36 months” for persons from a designated country of origin. I would like to have staff briefly comment on the change we're submitting here.

The Chair: Ms. Irish.

Ms. Jennifer Irish (Director, Asylum Policy and Programs, Department of Citizenship and Immigration): Thank you, Chair.

The intent of the amendment is to provide that designated countries of origin not be eligible for a subsequent PRRA risk decision for 36 months following their last risk decision.

Thank you.

• (1605)

The Chair: Have you concluded, Mr. Dykstra?

Mr. Rick Dykstra: I have.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: As you know, we don't believe the minister should have the power centralized for him to be able to designate countries, but here in this particular section we're very concerned that for those who are from designated countries, the bar has been raised for them to 36 months.

It took the NDP a lot, I would say, in the last great compromise to agree to what exists in Bill C-31 right now, which is a 12-month period. But this 36 months is just way over the top and not acceptable to us as well. We do not buy the rationale that this is actually going to do anything for our policy or our image in the world right now.

Canada is a very compassionate country, a very caring country, and here we are now raising the bar higher and higher for certain types of asylum seekers. These are the people we would have already accepted as refugees under the Geneva Convention, and even after accepting them that way we're going to continue to have a two-tiered approach: you're wearing a white shirt today, so you will get this kind of a treatment; you're wearing a yellow shirt, you'll get that kind of a treatment. It's as arbitrary as that.

Mr. Rick Dykstra: That's so not true.

Ms. Jinny Jogindera Sims: Really?

The Chair: Order, Mr. Dykstra.

Ms. Jinny Jogindera Sims: When you really take a look, it's the minister who will determine.... We know that even within designated countries, or what you would say are designated countries, there are cases for legitimate asylum seekers and refugee claimants. We know that because we've had them from countries that the minister has indicated would be considered safe.

What we're really talking about is that we have to do a really serious risk assessment before we remove people. That is not involved here. When you listen to the quote from Ezat Mossallanejad, policy analyst and researcher at the Canadian Centre for Victims of Torture, he says:

Also, we are concerned about the limitation of pre-removal risk assessment and coming up with some limitation on applying on humanitarian and compassionate grounds after one year of rejection.

Here it moves it to three for some asylum seekers. By the way, I want to remind you they will have met all of the five criteria. Before they are released from detention they will have met the criteria you get to stipulate.

We have to be very cognizant of the fact that we are putting people in some very dangerous situations and not showing the sensitivity we have historically shown.

Dr. Furio De Angelis, the representative in the Canada office of the UN High Commissioner for Refugees, says they support efforts by government authorities to decide applications in a timely manner. We all do. I don't think anyone sitting in this room is saying we need to slow down the process. However, states need to balance efficiency with the fairness of the procedure. Overly restrictive timeframes in the context of a sophisticated asylum process can lead to increased rates of abandonment and the rise of a number of unrepresented claimants. This is nothing new. We have heard this from witnesses over and over again. Asylum claimants do not ordinarily have the knowledge to navigate the legal system.

Once again, we are very concerned and would ask the government to reconsider raising the bar to 36 months. As much as 12 months is not great, the opposition here could support 12 months, but we won't be supporting 36 months.

• (1610)

The Chair: Mr. Weston.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): I'll just take 10 seconds to reply to my colleague, Ms. Sims. After listening to hours and hours of testimony, we know categorically it's not an arbitrary distinction between those who are wearing white shirts and others. There's a distinction based

on qualitative and quantitative grounds. The minister will be acting in the interests of not only Canadians but of refugees by designated countries, so the whole process may move more fluidly for the betterment of everyone.

Thank you.

(Amendment agreed to)

(Clauses 38, 39, 40, 41, 42, 43, and 44 inclusive agreed to on division)

(On clause 45)

The Chair: We are at clause 45, amendment G-6.

Mr. Dykstra.

Mr. Rick Dykstra: It's a technical amendment to the bill to ensure that the French and English versions of the sections are consistent. Upon review, it was felt that this language would be more consistent.

(Amendment agreed to on division)

(Clause 45 as amended agreed to on division)

(Clauses 46 to 57 inclusive agreed to on division)

(On clause 58)

The Chair: We are at clause 58 and amendment NDP-18.

Ms. Sims.

Ms. Jinny Jogindera Sims: This amendment would permit the minister the power to designate parts of a country or classes of nationals in a country. It's not that we would want any designations to occur, but this would permit it. Once again it's a mitigating amendment.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: I didn't quite catch the essence of the amendment.

Ms. Jinny Jogindera Sims: The amendment would permit the power to designate parts of a country or classes of nationals in a country. Currently the minister can only designate a country, the way the language is written. This amendment would allow something further than that.

Once again we have very serious concerns about the power resting with the minister to designate countries. There are groups within those countries that feel persecution. There are very few countries in the world that we can say are absolutely free of the kind of persecution that makes people escape and look for asylum.

• (1615)

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I just want to make the point that whether agreed to or not by the opposition, every eligible refugee claimant, whether or not they're from a designated country of origin, will have access to a fair hearing on the merits of their case before the independent Immigration and Refugee Board. So that should not be lost. These allusions to the idea that that doesn't exist I just felt needed to be clarified.

The Chair: Monsieur Giguère.

[Translation]

Mr. Alain Giguère: The principle in this amendment is simply to recognize a geographic and a demographic situation. In terms of geography, some countries are constellations of small islands. Others go from the Sahara to luxuriant plains of vegetation. Some countries have Muslims and Catholics. Other countries are so vast that we cannot talk about a specific people. For example, Russia has almost 45 languages. There are even more in India and China. People who live near the Gobi desert don't have much to do with those who live in Hong Kong.

The geographic and human situations of those countries imply that, when we are faced with a country's request to be recognized as safe, we give ourselves the flexibility—not the obligation, Mr. Chair—to restrict the designation of a country to some geographical areas that we know are safe. That does not mean that anarchy reigns in the country, but rather that some of the areas are dealing with specific challenges related to minorities, internal political issues, and so on.

At one point, Panama belonged to Colombia. They obviously separated. Did that mean that civil war broke out across Colombia? No. It was a political problem that strictly had to do with Panama. So no civil war broke out, because the two geographical areas separated at the insistence of the Americans.

Furthermore, other countries are dealing with the same problems. I just feel that the minister should have some leeway to be able to recognize a country as being safe, but to note that there are some problems. In other words, there would be no assumptions that everything is fine, which is what the problem is with the concept of safe countries. At the outset, we assume that those countries are fine. The process is too fast.

Mr. Chair, we are just asking the government party to agree to this sensible amendment.

[English]

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you, Mr. Chair.

I want to stress here that even within a country that we or the minister may consider to be designated safe.... We know of democratic countries where it is very difficult for the LGBTQ community, and we've heard testimony to that effect.

So it is very critical that even though we may think the whole country.... I find it hard that any country could ever be considered totally safe and nobody is ever going to be persecuted. Secondly, we have to allow the minister, now that he is going to have this power, to be able to look within the country and say, "Okay, this whole country is not being designated, but within it there is this group that we really want to protect."

We have signed on to the UN convention for this area, and I'm hoping you will agree to this amendment.

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: Chair, there's a lot of discussion or mention about what Bill C-11 included, or which part of Bill C-11 is included in this bill. I've heard the opposition say they wish all of Bill C-11

was moving forward. This was part of Bill C-11, this whole issue around transgender issues. We looked hard and studied on a very detailed basis the fact that there would be countries where, regardless of their designation, individuals would be able to seek refugee status in Canada based on the persecution they faced for being gay, lesbian, or transgendered. That hasn't changed from Bill C-11, and I'm surprised to hear the opposition not wanting to support it, first, or to amend it.

Second, I would like to clarify that the witnesses we had who spoke to this issue were very much focused on the current process with which they were unhappy. They actually didn't provide proposals or options on how to improve Bill C-31. Their focus was on the issues they felt were unresolved and hadn't been dealt with through the current process. I do think this is what I believe to be part of, as you said, the great Canadian compromise, and part of that compromise is embedded in Bill C-31 based on what we learned from Bill C-11 on this issue. The witnesses who did provide the information on this issue very much emphasized the current problems they have with the current system, versus how they felt. While they indicated they didn't support Bill C-31, they didn't provide us with a detailed recommendation as to how to improve it.

• (1620)

Ms. Jinny Jogindera Sims: I want to thank my colleague for the history lesson. It's always good.

The reason for moving this amendment is that the landscape has changed. In Bill C-11, it was a panel of experts, an advisory committee that would look at criteria and would be doing the designation. Our concern is that now it's going to be the minister doing the designations. A lot of that may be there in the regulations when they come down the road later, but right now we do not have them and they're not part of this legislation. Because of that, we want to clarify in the legislation and send the message out that this is not the unintended consequence that could result.

Just as we saw the unintended consequence that was realized when we looked at the deletion of (e) in an earlier motion...that's all we're trying to address here. It's not a clever move to sidestep or to get any further rights. It's basically looking for something explicit that would give the kind of protection that used to exist there, which was much more transparent than the future is going to be.

It's very hard, quite honestly, for me as a parliamentarian, to sit here passing a law, going through a law, where so much of the stuff is going to be in regulations and we don't know what's going to be in those regulations yet. I don't know what's going to be written in there. This is why, if the regulations were written and were brought here and we could vote on them...then I can just imagine that we might see all of this spelled out and we may not have had a need to move this amendment.

Mr. Dykstra, with that motivation, I hope you will see why it is so important for you to support this and to give us that unanimous support, so we get an amendment passed. This one, actually, absolutely is needed to give many communities out there that sense of assurance they are looking for.

Thank you.

The Chair: We are dealing with New Democratic Party amendment number 18.

(Amendment negated)

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Thank you—

The Chair: You have LIB-27.4. You don't need to read it, since you're moving it.

Mr. Kevin Lamoureux: Yes, I would move, as written in front of us—

The Chair: Okay, Mr. Lamoureux, now that you've moved it—

Mr. Kevin Lamoureux: Having said that, I would like to give a very brief explanation.

The Chair: Mr. Lamoureux, now that you've moved it, I'm going to rule NDP-20 out of order and inadmissible on the same grounds.

Would you like me to tell you why?

• (1625)

Mr. Kevin Lamoureux: No, but if I did provide—

The Chair: You don't want me to tell you?

Mr. Kevin Lamoureux: Well, if I can get you to indulge us for a few seconds, Mr. Chair, I was going to ask, if there might be the will of the committee to just discuss it for—

The Chair: We can't, because it's inadmissible. I'm going to rule it inadmissible, so we can't even discuss it. But I am willing to make the ruling, if you wish.

Mr. Kevin Lamoureux: Well, then, I would like to hear the ruling on it, Mr. Chairperson.

The Chair: This would be the same ruling I'd be giving for NDP —

Ms. Jinny Jogindera Sims: I want to say my two words.

The Chair: We'll give you two words, but right now we're dealing with the Liberal amendment.

I only want to read this once, because my voice probably won't last for twice.

Ms. Jinny Jogindera Sims: I will remember.

The Chair: Bill C-31 provides for the minister to designate countries of origin. The amendment seeks to amend the bill so that the minister must appoint an advisory panel to assist in making the designations.

House of Commons Procedure and Practice, second edition, states at pages 767 and 768:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

Mr. Lamoureux, in my opinion, the amendment proposes a new scheme that seeks to alter the terms and conditions of the royal recommendation, and I therefore rule the amendment inadmissible.

I don't think we can debate my ruling. You can challenge it.

Mr. Kevin Lamoureux: I won't challenge the ruling of the chair.

Suffice it to say that the intent of the motion was just to highlight the importance of having an advisory committee determine what would be a safe country and what would not be.

The Chair: God bless you for getting it in anyway.

Okay. We have amendment NDP-19.

Go ahead, Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you, Mr. Chair.

Our intention, once again, is to try to reinstate something that existed in Bill C-11, which is an advisory panel that would be looking at designating countries or safe countries. That was our only intent, and I'm hoping you will now let this amendment stand.

The Chair: We're on amendment NDP-19, which is in order.

Ms. Jinny Jogindera Sims: I thought you said you were not going to admit it.

The Chair: That was NDP-20.

Ms. Jinny Jogindera Sims: I spoke to NDP-20 now.

Okay, thank you.

The Chair: I'm sorry, I shouldn't have said that.

Ms. Jinny Jogindera Sims: I thought you were doing both of them together, so I did go over—

The Chair: NDP-19, on page 84, is in order.

Ms. Jinny Jogindera Sims: I'm trying to get to it as fast as I can.

Thank you very much, Chair.

This amendment would ensure that qualitative criteria are also considered in the designating countries, because we would like to see something that would look at the human rights record of the country.

Factors set out include, in section 96, a “well-founded fear of persecution”, and in section 97, risk of torture, risk to a person's life, or risk of cruel and unusual treatment or punishment. These are all references to IRPA.

Relevant international human rights regulations set out the availability in the country in question of mechanisms for seeking protection and anything else set out through regulations.

What we are trying to do is build a little bit of a framework. As I said, it's very difficult to sit here and keep passing clause after clause without knowing how it's going to be operationalized. What this does is provide guidance. It is not limiting, because the minister can add to these ad nauseam and we would not object. It actually provides for a minimum of the kind of qualitative criteria that should be considered.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chairperson, I'm not going to take a pass on being able to provide comment on this particular amendment because, quite frankly, it allows me also to reflect on what was a fairly unanimous consensus, or whatever you want to call it, from the old Bill C-11. I think this amendment picks up a good portion of that, but not the essence of it.

The essence of it was in regard to the safe country list and how that safe country list is going to be developed. There are differing opinions on it.

In this amendment we see that we want to put something more in legislation, because it's more of a cautionary note. To what degree do we really want this particular minister or any future minister to have the power to designate a country as a safe country?

We, as a political party, have made it very clear that we don't believe the minister should be deciding what is a safe country and what is not a safe country.

This amendment, as proposed, could have been even better—but then it would likely have been ruled out of order, I suspect—by incorporating the idea of returning to having an advisory council, something that did receive unanimous support from a previous House.

I just want to emphasize that point and look to the government to recognize the past achievement of this committee. I wasn't a part of it back then. Mr. Dykstra was a part of that committee. We are taking a significant backwards step by not acknowledging what was agreed to in the past.

Thank you, Mr. Chair.

• (1630)

The Chair: Madame Groguhé.

[Translation]

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

If the minister designates the safe countries, his discretionary power will obviously increase. At any rate, Bill C-11 talked about having a panel of experts. But we have completely moved away from that idea. As the HCR said, the practice of designating safe countries of origin is only a tool used for a procedure. Since it is a tool, we need to have basic qualitative criteria to be able to make decisions on designating safe countries.

As Ms. Sims pointed out and as some witnesses reported to this committee, we also have to consider that some so-called democratic countries do not protect certain segments of their populations, such as transgendered people, lesbians and gays. We also heard Gina's testimony. She belongs to the Roma community and she spoke at great length about how persecuted those people are.

So we are asking the government to support our amendment. Thank you.

[English]

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: I missed the presentation by Gina, but I have read the script, and it's very moving testimony. I think it goes to one of the key reasons why we brought this amendment here.

I want to read you a quote from Angela Martini, from Monday, May 7, at 11:26 a.m. She said that “any country on earth is capable of producing a refugee”.

That's our position. We are concerned about making sure that even those who come from safe countries have their rights respected.

She goes on to focus a bit on the Roma, and my colleague already talked about that. That's why we have said that not only parts of countries but certain specific groups of nationals within a specific country could also feel unsafe.

The Chair: Go ahead.

Ms. Jinny Jogindera Sims: I really inspire Mr. Weston. I notice that every time I speak he leans forward, and then he can't quite decide whether he's going to speak or not.

Go for it.

• (1635)

Mr. John Weston: That's correct. I agree with what you just said.

Let me now disagree—

Ms. Jinny Jogindera Sims: That's good. Let's stop there.

Mr. John Weston: Let me now disagree with what you said before that.

Mr. Chair, the difference between being in opposition and government—from my few years of relatively new experience—is that when you're in opposition you can talk about the statistically impossible thing, the Utopian perspective where you're delivering everything to all the people all the time.

When you're in government, you have to make decisions; you have to set priorities. What this government is doing responsibly is trying to allocate the resources so we can keep a refugee system in place that can open its gates to the world and help people who really need help, rather than being bogged down by the statistically insignificant cases. If we implemented procedures around this as you would desire, my friend, it would slow down the system so that we would never be able to keep it going. It would finally collapse on its own procedures.

It's why we're here and why we're trying to improve the system.

The Chair: Ms. Sitsabaiesan.

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

The Canadian government has an obligation to create a balance in our refugee determination process to make it fast while upholding our Canadian values of fairness. This amendment would do that.

There were witnesses who raised numerous concerns about concentrating this decision in the hands of the minister. Without an independent panel of experts, the qualitative criteria should be explicit. We have heard and we've said that no country is truly safe. A country that is considered safe for some residents may be unsafe for others.

Impartiality towards the development and maintenance of this list is extremely important. If this is not going to happen, then the criteria included in this amendment must be considered. It's confusing as to why Bill C-31 would remove this safeguard.

Thank you.

The Chair: Madame Groguhé.

Mrs. Sadia Groguhé: Madame Sims—

The Chair: Okay. We'll let the boss go first.

Ms. Jinny Jogindera Sims: Thank you.

I don't think I have ever been called Utopian, or anything.... You just need to talk to some of the students I've taught over the years and look at some of the other things I've done in my life.

I'll tell you, no human life is inconsequential. We're talking about very vulnerable people who come to our shores, who come to our country. By the way, in the last decade we've maybe had two boats—and I've heard that confirmed—and out of those two boats the vast majority were accepted as legitimate refugees.

When we're asking for this particular amendment...we did mention the Roma, and we'll use that as an example. Last year we accepted well over 100 people from the Roma community as refugees under the Geneva Convention.

All we're asking for in this amendment is for us to recognize something we already know: there is no country that is 100% safe.

The Chair: Go ahead.

[Translation]

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

I would like to quickly turn to the word “statistically” used by Mr. Weston. Since he wants to talk about statistics, could he tell me how many refugee boats full of irregular arrivals have come over the last decade? There have been very few. Yet Bill C-31 relies on arrival statistics, which are very low. Also, this is not Utopia. When we talk about human beings, fundamental rights, recognizing the right to seek asylum and the rights of refugees, we are talking about a concrete reality grounded in fact. People are fleeing persecution and are taking boats or using any other means to come here.

• (1640)

[English]

The Chair: Order, please.

Go ahead.

[Translation]

Mrs. Sadia Groguhé: Regardless of how they arrive, these people are fleeing persecution. They must be considered and respected as refugees first and foremost.

That's what I wanted to add.

The Chair: Mr. Giguère, you have the floor.

Mr. Alain Giguère: Mr. Chair, according to some people, the world is dividing in half: those who are Irish and those who wish they were. Unfortunately, Ireland is part of two countries. Perhaps that's the problem. One of those countries is England, a democratic country. It's a state of law, a state we have an excellent relationship with. Northern Ireland, one of the provinces of England, isn't necessarily a good place to live if you are Catholic in a Protestant area and vice versa.

We're basically saying that there are very specific problems in that area. We consider England a democratic country, but is it completely free of violence? That's something that needs to be considered.

Some Latin American countries are democratic, but a unionist there has an extremely short life expectancy. That's something we should perhaps consider if we are unionists. If someone is a unionist

in those countries, the life expectancy is 25 years lower than the national average. It's true; it's not something we made up.

There are very democratic countries where small communities face extreme persecution. For religious or historical reasons, the Duncan clan in Scotland was demonized for centuries, under the pretext that they were a clan of thieves. This type of tradition repeated to the extreme leads to unacceptable shunning. That doesn't mean that England and Scotland aren't democratic countries.

We are simply asking you to take it into account. The minister still makes the decision; we aren't changing that power. We would like to, but it's not the purpose of the amendment. With this amendment, we're asking you to recognize something as simple as the fact that some careers, like that of a human rights lawyer, may be at risk in some countries. That's all we're asking for.

[English]

The Chair: My heritage is from northern Ireland, and I'm always pleased when someone raises the Irish. I think it's a good place to live. I'm not seeking dual citizenship, but they have good beer.

We're talking about NDP-19.

(Amendment negated)

Ms. Rathika Sitsabaiesan: It's a tie vote, Chair.

Mr. Rick Dykstra: I'm voting against.

Ms. Sims is throwing me off.

Ms. Rathika Sitsabaiesan: How could you?

The Chair: I'm going to call the vote again.

(Amendment negated)

Ms. Jinny Jogindera Sims: It came close, right?

The Chair: I will go through it again if you wish, Ms. Sims, but NDP-20 does require a royal recommendation.

• (1645)

Ms. Jinny Jogindera Sims: Chair, what we were attempting to do with this amendment is to put in place an advisory panel to designate countries as safe, because we believe it's too much power in the hands of one minister.

The Chair: I'm ruling it out of order. It's inadmissible.

Ms. Jinny Jogindera Sims: You have made that ruling and I have heard you. I will not be challenging the chair at this time.

(Clause 58 agreed to on division)

(On clause 59)

The Chair: We're on to clause 59 and NDP amendment 21.

Ms. Sims.

Ms. Jinny Jogindera Sims: This is a fairly straightforward amendment. Once again it puts minimum timelines into effect for the production or submission of documents. It introduces a 30-day minimum for the basis of claim documents and 45 days minimum for appeals to the Refugee Appeal Board. We have heard from a number of witnesses on this issue.

On Monday, April 30, we heard from one of the witnesses of my colleagues across the way:

The one exception I have to supporting the Minister is that he is expecting faster decisions to accelerate the overall processing times on refugee claims. However, he is cutting 1,500 CBSA positions. This is counterproductive to an accelerated refugee processing time, because they're the intelligence gatherers. They're on the front line and meet the people when they come in. So how does he expect to expedite and accelerate the process if on the one hand he takes away the very officers who are supposed to help with the processing?

Also, Richard Goldman said the following:

We agree that somebody should not have to wait two years for a decision on their refugee claim.

Chair, this is where I think we have a lot of unanimity, from both the presenters and the people around this table. None of us has an interest in trying to prolong things. We want to speed things up.

Mr. Goldman went on to say:

However, we don't think you should throw out the baby with the bathwater. Thirty days is too short. No appeal makes it impossible to correct errors.

We need to pay attention.

Then Chantal Desloges:

However, this 15 days, 30 days, 60 days, etc., is just completely unworkable. I'm telling you as an expert who has worked a lot in this system that it is set up to fail. It is impossible to work with. It's not only a problem for the claimant, it's not only a problem for the lawyer, but I can't even imagine what kind of a nightmare this will be for the Immigration and Refugee Board to have to make decisions within that kind of a framework. I don't know who in the department thought it would work, but I can assure you it will not work. Shortened timelines definitely are a good idea, but this kind of a shortened, accelerated timeline is just too much. It cannot work.

As far as I know, there is no new money going to the board. They're already having a hard time making decisions within the timeframe they have.

Then she goes on to say:

I guarantee you this system, if implemented, will not be faster, and I'll tell you why. People are going to be forced to postpone and adjourn claims at an unprecedented rate. And if those requests to postpone those cases are not granted, it's going to end up in the Federal Court and people will win, because it's a denial of natural justice if a person does not have a reasonable opportunity for counsel.

That is said so well, in the words of our witnesses, that I am not going to add another word.

The Chair: And that's a promise.

Ms. Jinny Jogindera Sims: That's a promise on this clause.

The Chair: Mr. Lamoureux.

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

I want to reiterate the fact that numerous witnesses have come forward, many of whom were not witnesses I have even had the opportunity to chat with, and I think the consensus is that the timeframes the government has put in place are not appropriate. I think the NDP critic has put it quite well, in the sense that at the end of the day, I don't think government is going to achieve what it's hoping to achieve. We heard that from a number of witnesses, so I think the government should take note, whether it's this particular amendment or the one that's going to follow, Mr. Chair, both of which deal with trying to allow for more time. In our amendment we refer to 28 days as opposed to 30 days, which is being proposed by the New Democrats.

So there is a little difference in terms of amounts of time, but the essence is the same, and that is that we have to ensure that we allow for claimants to have a reasonable timeframe to be able to get their applications completed and submitted, and we have to make sure there's an acceptable amount of time for people to have their appeals heard in a proper fashion.

Thank you, Mr. Chair.

• (1650)

The Chair: Thank you, Mr. Lamoureux.

We're dealing with amendment NDP-21, which is a proposed amendment to clause 59.

(Amendment negated)

The Chair: Liberal amendment 27.5, Mr. Lamoureux—and you don't have to read it.

Mr. Kevin Lamoureux: Thank you, Mr. Chair. Consider it moved as read, and it is in front of all committee members.

Again, I'll just refer to my last comments. The only thing I would add is that it also makes reference to other claims, that a hearing to determine the claim is not to take place until at least 150 days.

Unless there are any questions, I would suggest that we accept it.

The Chair: We're going to vote on Liberal amendment 27.5.

(Amendment negated)

(Clause 59 agreed to on division)

Ms. Jinny Jogindera Sims: Chair, may I ask for a short comfort break, please? I'm sure everybody must be feeling the need.

• (1650)

_____ (Pause) _____

• (1700)

The Chair: Okay, we'll continue.

(On clause 60)

The Chair: Mr. Lamoureux, would you like to speak to amendment LIB-28?

Mr. Kevin Lamoureux: Mr. Chair, I'm going to move that Bill C-31 in clause 60 be amended by replacing lines 1 and 2 on page 29 with the following:

(b.1) subject to subsection (2.1), less than three days have passed since their claim for

To put it into context, Mr. Chair, it expedites timelines for claimants from DCOs and no access to the RAD for designated foreign nationals or claimants from DCOs. It is necessary to remove the 12-month bar—we've had some discussion already on that particular issue—for a rejected claimant to request pre-removal risk assessment.

I'm going to refer to comments by Sean Rehaag, a graduate from Osgoode Hall. He said the system is robust, as the criminal justice system is. It does have errors, and there are appeals or checks in place to help mitigate them. Clearly, then, in less than robust systems there will also be errors, so we do need to have adequate checks in place. This is something we thought might be adequate for us to look at, at least better than what was being proposed earlier. So compared to the alternative, I think this is something that could be supported.

The Chair: Thank you, sir.

We are on amendment LIB-28.

(Amendment negated)

Ms. Jinny Jogindera Sims: Chair, we supported that. Did you get our votes?

The Chair: I didn't. We'll vote again.

Shall amendment LIB-28 carry?

(Amendment negated)

(Clause 60 agreed to on division)

(Clauses 61 to 67 inclusive agreed to on division)

(On clause 68)

The Chair: Mr. Dykstra, would you like to talk to amendment G-7?

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

This is another technical amendment. The clause actually provides that pending applications for protection—I'm speaking now to the pre-removal risk assessment—they no longer have a right to the pre-removal risk assessment decision, once this clause comes into force, if the application was submitted 12 months or earlier from the time the claim was last rejected or determined to be withdrawn or abandoned.

For some clarity here, the provision actually confirms that the minister can refuse to consider a pre-removal risk assessment application that was made less than 12 months before this provision comes into force.

The Chair: Ms. Sims.

• (1705)

Ms. Jinny Jogindera Sims: I was going to be asking Mr. Dykstra a question, and he answered my question before he heard it. It had to do with the retroactive aspect. It actually leads to retroactive application of the bill. We have a great deal of concern around that, and we do not support retroactive application of legislation.

Mr. Rick Dykstra: Perhaps I could ask Ms. Irish to explain a little bit as to why the determination was needed to move in this direction as well.

Ms. Jennifer Irish: Thank you, Chairperson.

This particular provision does have retroactive application for the purposes of the 12-month bar on PRA. The policy intent of that is that if new applications coming into force are subject to the bar on the basis that one can reasonably expect that risk decision will remain valid for 12 months, then the same logic should apply to

those whose applications are still pending, bearing in mind that the minister can invoke an exception to the bar on PRA in the event of changed country conditions.

Thank you.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: This is one of those areas...the pre-removal risk assessment is a pretty critical component when you're looking at safety for people to come to our shores who are feeling vulnerable. To go retroactively is almost like saying that members of this group here, because they weren't born by a certain date, now have to have these changes, so we're going to go back and capture the others, because they were alive during that time, and we want to make sure everybody's on the same footing.

One of the ways everybody could be on the same footing is that we reinstate a pre-removal risk assessment for everyone. Putting everybody on that kind of equal footing, which you so eloquently explained to us, doesn't always mean we have to go to the lowest denominator.

Surely, when it comes to looking at protecting people's security and looking at the kinds of risks that many of these could possibly face, it would be better for us to err on the side of caution than to throw out the baby with the bathwater, which is what this does, and it actually makes it retroactive as well.

We are opposed, in case you didn't gather that.

Mr. Rick Dykstra: I got that.

Ms. Jinny Jogindera Sims: I thought you might.

Mr. Rick Dykstra: You had me at hello.

The Chair: Thank you, Ms. Sims.

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: My question is for the technical advisor.

Can you give some examples of situations where Canada has voted on laws retroactively, and provide some background on how this has been handled by the courts? We're talking about a quasi-criminal sanction here.

[English]

Ms. Jennifer Irish: Chair, I'm asking our counsel, Matthew Oommen, to reply.

Mr. Matthew Oommen (Senior Counsel, Legal Services, Department of Citizenship and Immigration): There are a few points I'd like to make. First of all, I'm not sure we're actually talking about a retroactive application; it's more accurately described as retrospective, moving forward in time. That's one technical clarification.

Second, whether we're speaking of retroactive or retrospective, legislation is able to do that, the only caveat being that the legislative provision must clearly do so.

The third point would be that this provision is in no way quasi-criminal, as the honourable member seemed to refer to it. It confers a benefit, the privilege of yet a further risk assessment to an applicant.

Thank you.

The Chair: That's it.

Ms. Jinny Jogindera Sims: Just to clarify, Chair, for me, it was not the criminal aspect. I was talking about the risk to the person's life if they should go back, if the assessment is not done.

The Chair: Madame Groguhé.

[Translation]

Mrs. Sadia Groguhé: I would like to insist on one point, which is that it is an additional safeguard that is being taken away from refugee claimants, and that's not right. That's the position we're defending.

Thank you.

● (1710)

[English]

The Chair: We are going to vote on amendment G-7.

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

(Clause 68 agreed to on division)

(On clause 69)

The Chair: Government amendment 8.

Mr. Dykstra.

Mr. Rick Dykstra: It's before those here, Mr. Chair, and again it's a technical amendment. The clause was amended to provide that only subsection 15(3) of the BRRA would come into force on royal assent of Bill C-31.

Basically, it means that the 12-month bar on assessing a pre-removal risk assessment would be in effect upon royal assent of the proposed legislation. It's just a follow-up to the previous section.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: We're just as opposed to this as we were to the previous—

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I'm shocked to hear that. I thought you might be supportive, since the other one passed.

Is that not the case? No? Not at all? Not a chance?

Ms. Rathika Sitsabaiesan: No.

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

(Clause 69 as amended agreed to on division)

(Clauses 70 to 77 inclusive agreed to on division)

(On clause 78)

The Chair: New Democratic Party amendment 22.

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

I know that we've been going at this at breakneck speed. We have spent many, many hours together in each other's company, probably more hours with each other than with our loved ones.

I might have missed this, so I just want to make sure. I know we had requested the privacy impact assessment. It was going to be

brought to the committee. Unless I'm having a senior moment, I have not seen it yet.

The Chair: I can't help you. I'm just a chairman.

Ms. Jinny Jogindera Sims: I realize that, Mr. Chair.

Never say "just a chairman". Every person is special in his or her own way.

Mr. Rick Dykstra: You're right. Someone hasn't seen her loved ones in a while.

Ms. Jinny Jogindera Sims: I just want to put on the record that it would be really critical. I'm sorry that we have not received the privacy impact assessments. I realize that we don't have them, and I also realize that we have these very tight timelines. I don't want to belabour the point, but I do want to say that it would have been good to have had them here.

The Chair: We now have amendment 22 on the floor.

Ms. Jinny Jogindera Sims: I'm now going to speak to amendment 22.

The reason I stopped to ask for the privacy impact assessment of the biometrics was that it would help to inform my decision as we go along with this.

I think I've heard many people say that biometrics is the way to go, we're just catching up, etc. But one thing I will tell you is that Canadians care very deeply about their privacy.

We know that this is actually going to biometrics. We're trying them out first on visitors who come to this country. They are not Canadian citizens. But we respect other people's right to privacy, just as we respect our own.

I also acknowledge that in this legislation, as the minister explained it to us, we're talking about photographs and we're talking about fingerprints.

I also heard, when we questioned the minister at a subsequent meeting, that our attempt to collect biometrics is for verification of identification. It is for verification purposes and/or for purposes of national security. I think we live in a world in which we can see that there may be a need for that. If that's there, it's really important that such information be destroyed once verification is complete.

There are two things. One is that we have identified the person, and the second is that we know that the person is not a national security risk to us. Once we know those two things, we destroy that data.

I have serious concerns about the protection of that kind of data bias. I don't think we've had anything presented to us as to how it will be looked after.

We have put this amendment in after a great deal of thought and upon hearing the government's concerns and the minister's direct response that the only purpose of collecting this data is identification verification and national security.

In this amendment, we're also saying that once those two have been established, once verification has taken place, we need to destroy that data.

I have made it very easy for Mr. Dykstra to support this amendment because, as he knows, it reflects very truly what the minister said when he was before the committee.

• (1715)

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I want to enter into a potential discussion on this issue. Biometrics was first raised a number of years ago, under the Liberal Party. When we were in government, we saw this as an issue that needed attention. The Liberal Party actually initiated a pilot project, and all of a sudden, fortunately or unfortunately—unfortunately, from my perspective—there was change in government and the issue of biometrics seemed to be put on the back burner.

Then we had the Minister of Immigration say, through Mr. Dykstra, that we're going to debate biometrics here in the committee, do a study on it, and, as my colleagues from the New Democrats have talked about, to try to get a better understanding of biometrics. This particular amendment is trying to put in some safeguards.

I do believe that at the very least the government's approach with biometrics is somewhat premature. It's premature in the sense that our committee has not even had an opportunity to provide a final report on it. We are waiting for valuable information to come forward.

Biometrics does have a potential role to play with different forms of visas, not just for refugees, but for working visas, student visas, and other forms of temporary visas, and I know the government is looking at that.

I think there could have been a more fulsome discussion that would have ultimately led to better legislation on biometrics. I look at this amendment as at least providing a little more definition, but I do believe we've really missed our mark in terms of dealing with the whole issue of biometrics.

Other countries in the world have been engaged in this for the last number of years, and it is only most recently that the government seems to have recognized this is a technology worth pursuing. But there are no safeguards. They have not put safeguards into place that go beyond the legislation we have before us, such as how the information that is gathered is going to be used, how it is going to be disposed of, how long we are going to keep it in records, and so forth.

With those comments, we are prepared to support this particular amendment. But we do believe the government would have been better off to incorporate biometrics in a separate piece of legislation at some point in the future, when we would have been able to have a more thorough discussion on it.

• (1720)

The Chair: Ms. Sims, and then Mr. Dykstra.

Ms. Jinny Jogindera Sims: Mr. Chair, my colleague just made some excellent points about biometrics. I raised my concern at the beginning that we didn't have the privacy impact assessment in front of us.

In many ways, this little piece being buried in this legislation reminds me a lot of another piece of legislation, called the budget. So

many of the immigration issues are buried in there, including a backlog of skilled workers whose rights are being denied. There are other components as well.

I am really hoping we won't see too much of this in the future.

Mr. Rick Dykstra: I could comment on the last presentation, but I will indulge your advice on that, Mr. Chair.

I will note that when we've discussed biometrics in any of the previous amendments that have been suggested by either Mr. Lamoureux or Ms. Sims, the concern we have had, and continue to have when we see the amendments come forward, is that if we were to pass them, it would actually prevent the government from being able to collect biometrics to (a) check for a criminal background and (b) check for previous immigration history, which is critical to the success of implementing biometrics, at the same time as passing the bill. If someone is going to seek entry into Canada and they are not a Canadian citizen, and they do so through the means as suggested in the bill, then I think the adoption, as is, of the biometrics strategy within the bill is important, and it will be supported by the government.

I do note, though, that Ms. Sims is correct. I do recall when she did ask for that information and it was to be forthcoming. I just don't recall that we'd actually set a date so that we could have it before clause-by-clause, which we probably should have done. It's my mistake as much as anything else because I don't think the biometrics folks were thinking we needed it before clause-by-clause. I think they determined it was something the committee wanted to look at under its biometrics study, but not necessarily for the clause-by-clause.

I could be wrong, but if any of the staff here want to comment on that specifically, they are free to do so. I'm not asking for that, but if they want to make a clarification, it's probably a good time to do it.

Ms. Jinny Jogindera Sims: I'm presuming we will be getting that soon.

Mr. Rick Dykstra: We'll make sure, yes.

The Chair: Monsieur Giguère.

[Translation]

Mr. Alain Giguère: You probably know the old saying that the road to hell is paved with good intentions. That is exactly the problem now.

We want to prevent criminals, people we do not want, from coming to our country. That in itself is good, but we cannot thereby harm refugee claimants and their families. Hence the problem of information-sharing.

Let me give you a very simple example. We want to know if an individual arriving at our border has committed any crimes in other countries. Canada files a request with Interpol, which has a database that is completely open to its members. Interpol checks its database and tells us that the individual is flagged, not as a criminal, but as an illegal immigrant in another country. They send us that information, but, in so doing, Interpol's open network is telling all its members that Canada has filed a request about that individual and has received a reply saying such and such. If the refugee claimant comes from an unfriendly country, the government of that unfriendly country will be informed that one of its citizens has applied for refugee status in Canada. If the refugee claimant goes back to his country, he will be in danger, and so will the members of his family who stayed there.

There's the rub. We do not want to prevent people from coming, but we want to screen those who do, in order to prevent criminals from entering. It's very commendable, but the problem is that we cannot endanger everyone arriving on our doorstep, honest people who still have families in their countries of origin. That is our problem. No one is giving us any guarantees about the sharing of information. In that respect, the amendment errs on the side of caution and that is clearly what we must do.

You have probably come across examples in your ridings. In my riding, I have dealt with immigration situations involving people who still have families in undemocratic countries and who are afraid to talk to us for fear that their home government will be informed about the situation. I am sure that it also happens in your ridings. My case is not exceptional. People who are afraid of their governments don't stop being afraid of them once they are in Canada, certainly not when they are knocking on our door at the border. That is the kind of situation that we have to avoid.

I am sure that, like me, you have absolutely no interest in helping an undemocratic government oppress even a fraction of its people. If you think you can improve on what this amendment is suggesting, go right ahead. We just want to do no harm. Around this table, I feel that we are unanimous in the fundamental desire never to let our country become the unintentional ally of an oppressive government.

I do not know what else I can say to convince you to support this amendment, but these are situations that you come across every day. The people on your riding staff deal with them, as do mine.

We have not received the information we asked for from the RCMP and the Canadian Forces. How will this database be managed? Who will have access to it? Will people flagged by the database be able to obtain the information that has been gathered on them? These are very important questions and we have no answers. As we wait for the answers, let us err on the side of caution.

• (1725)

We could take a 15- or 20-minute break. We could discuss it in more detail. You can introduce a technical amendment yourselves, to make sure that we will never do any harm, that we will never be the unintentional allies of oppression.

[English]

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Based on the comments, I think it's important to get some feedback from officials on what was just stated, please.

Ms. Monique Frison (Director, Identity Management and Information Sharing, Department of Citizenship and Immigration): The intention of the clause is to give the Government of Canada the ability to enter into agreements or arrangements with foreign governments to collect information on behalf of the foreign governments.

For example, the United Kingdom and Australia partner on some of these application centres overseas. This clause would give the Government of Canada the ability to have an agreement or arrangement with the United Kingdom to collect biometrics for the United Kingdom on applicants to the United Kingdom, not applicants to Canada. Then we would use Canadian equipment with Canadian security standards, collect the information, and send it to the United Kingdom. The United Kingdom would then pay us for that service. That's the scheme we will be able to have if these clauses are accepted into IRPA.

I can address some of the other questions around third-party sharing and access, if you wish.

• (1730)

Mr. Rick Dykstra: Specifically on Interpol, Mr. Giguère brought this up today and when we had witnesses who could comment further on the biometric strategy. I think it's important. The sharing of information through an organization like Interpol is a concern for him. He's afraid of how fast and easily confidential information could be shared by Interpol with other organizations that have not entered into any agreements with Canada.

Ms. Monique Frison: The fingerprints we collect on applicants for temporary resident visas and student and work permits will be sent to the RCMP for checks against the prints the RCMP holds on people who have been convicted of criminal crimes in Canada; former applicants for temporary resident visas, student permits, and work permits; refugee claimants; and deportees.

The prints we collect on applicants for temporary resident visas, student permits, and work permits will not be checked against Interpol records or sent to Interpol. Even if they are—or for any of the other information-sharing agreements the government already has in place—it's fairly standard to include restrictions on sharing with third parties. Within those restrictions there are further restrictions to ensure that sharing does not endanger refugees and that it abides by our obligations under various refugee conventions.

As for access, the department already has a process for applicants to access the records on all the information CIC collects from applicants. We'll be using the same process to allow applicants who have to provide their biometrics to access their records, including their biometrics and any results from the biometric checks.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: If I heard correctly, the biometric information will not be given to Interpol.

Ms. Monique Frison: From what I understand of the text, it will not.

Ms. Jinny Jogindera Sims: It will go to the RCMP. Once the RCMP has done what it has to do, what will happen to the biometric information?

Ms. Monique Frison: We're collecting two types of biometric information: fingerprints and live digital photos. The fingerprints, along with some basic tombstone biographical data, will be stored by the RCMP. They will keep that information for whatever retention period we set.

Ms. Jinny Jogindera Sims: Mr. Dykstra, do you know what kind of period we're looking at to retain this data before it is destroyed? We don't keep data forever.

Mr. Rick Dykstra: No. I think my recollection is that there would be a period of time it would be retained for. It wouldn't be destroyed immediately, but it wasn't as long as I think Mr. Giguère was concerned about.

Monique could probably do a better job of answering that question.

Ms. Jinny Jogindera Sims: What would be the norm?

Ms. Monique Frison: We're considering a retention period of about 15 years. Then it would be a longer retention period for people who are found inadmissible under the Immigration and Refugee Protection Act for some of the serious inadmissibility provisions like terrorism, national security, war crimes, crimes against humanity, and serious criminality.

Ms. Jinny Jogindera Sims: Could I ask this as a follow-up?

I can actually see, if you've got those kinds of serious situations, why you would need to keep that data. But for people who don't have any of those bad things in their records—in other words, they come up clean, or as clean as any of us would in this room—I'm finding it very difficult that the data would be kept for 15 years, because that's a very long time.

I've worked in organizations where we keep data for so many years; 15 years of keeping private data is a very long time.

• (1735)

Ms. Monique Frison: Canada issues multi-entry visas, temporary resident visas that can last for 10 years, so we would have to keep the information for at least as long as the visa or the document for which it is issued. Then we would keep it for some period of time after that to be able to, at least in some instances, help facilitate the approval of the next travel document or the next visa or the next permit applicant.

Part of the benefit we will be getting from biometrics is that it will facilitate the travel of legitimate applicants. If we keep the biometrics for a period of time after that, it gives legitimate applicants the opportunity to apply again and then to establish that they are the same person who applied the last time.

Ms. Jinny Jogindera Sims: Thank you very much.

In light of the answers I have received, I am going to urge my colleagues across the way to support our amendment so that the biometric information is destroyed as soon as verification has been done and the person does not pose a national security risk.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: I'm trying to understand the purpose of the amendment, because I think Monique just did a good job of describing something that's critical to this process and part of the reason why they'll be kept that long.

We actually grant visas, one-year or temporary visas, or five-year visas, or even the new 10-year super visa. One of the advantages that visitors to this country have under the new strategy with respect to biometrics is that they would have to pay the fee once, and at least their record, if they're legitimate and confirmed travellers.... They would not have to continually go through the process.

I understand the issue of privacy. Whether or not we happen to agree on this particular part of the bill is one thing, but one of the aspects that's very important to the members on this side is the issue of privacy and how that privacy is respected.

I think it's a useful vehicle, not just for the safety and all the other reasons I have argued or presented over the past couple of days on this biometrics issue. The fact is that it actually gives those who are travelling here to this country a confidence that if they have qualified once under the new system—unless something happens to them, from a security perspective—they're going to be approved to travel again and again into the country.

So it's an actual advantage to travellers coming into the country. It's obviously an advantage to Canada in terms of the nature of its safety.

One more point I would make—and please confirm this, staff, in case I'm wrong—is that if an individual has gone through the biometrics process and then has been granted the honour of Canadian citizenship, those documents and records will in fact be destroyed.

Ms. Monique Frison: Yes, that's right.

Ms. Jinny Jogindera Sims: Thank you very much for that clarification.

The Chair: We are dealing with New Democratic Party amendment 22.

(Amendment negated)

(Clauses 78 to 80 inclusive agreed to on division)

(On clause 81—*Designation under section 20.1*)

The Chair: Ms. Sims, on New Democratic Party amendment 23, on clause 81, you have the floor.

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

As we said earlier, we are not for a two-tier refugee system. We believe that our most vulnerable need to be treated with compassion and with the appropriate steps that currently exist. At the same time, we heard from our colleagues across the way that we need to have a different process in place should we get large groups arriving at any given time.

Our proposal is that if the group is 50 persons or more, only then could the minister designate irregular arrivals. The rest of the arguments I've made throughout the day, so I won't repeat them.

• (1740)

Mr. Rick Dykstra: Consistently, I might add.

(Amendment negatived)

Mr. Kevin Lamoureux: I want to speak on clause 81.

The Chair: Go ahead, sir.

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

We have a concern on clause 81, and I look to the staff to provide some information on it. Part of the concern we have is, again, the retroactive approach that's being taken when we're saying "March 31, 2009". There is concern that through this particular clause we're saying this legislation will affect those who would have arrived on the two ships, the *Sun Sea* and the *Ocean Lady*.

I wonder if you can confirm whether or not the *Sun Sea* and the *Ocean Lady* will be directly affected if this clause is to pass as is.

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

It's up to the minister to make a determination on that point. Hypothetically, if those arrivals were to be designated, then yes, the individuals on those arrivals could be subject to some of the designation scheme.

Mr. Kevin Lamoureux: So if we pass this clause, those 500-plus individuals who arrived a couple of years ago could then be told they're not going to be able to sponsor their family members for the next five years, if the minister wants to make that determination. Correct?

Mr. Allan Kagedan: As you mentioned, the legislation provides a number of disincentives to human smuggling, including not being able to file for permanent residency for over five years. Whether or not any decision would be made with respect to them is in the future and is not known at this stage.

Mr. Kevin Lamoureux: Mr. Chair, my concern in wanting to raise the issue at this point is to make sure that committee members are fully aware that if this clause passes, we're empowering the minister to be able to look at the *Sun Sea* and the *Ocean Lady* and those who were aboard those two vessels and say that they will not be able to sponsor their spouses and children for at least five years. We're allowing the minister to be able to make that determination. I believe that's wrong. I think this should not be allowed.

We heard presenters talk about the impact on families. I've made reference to mental issues, the psychological impact it'll have on people. I'm expecting a high percentage of these individuals will be classified as refugees, and I think it's terrible for us to be doing something of this nature that's going to become retroactive and deny those members who came in on those two vessels the opportunity to be reunited with their families.

Without further comment, I would hope members will agree to delete this or vote against this particular clause, because it's wrong.

• (1745)

The Chair: Thank you, sir.

We're dealing with clause 81.

Ms. Sims.

Ms. Jinny Jogindera Sims: Chair, the NDP's position, on this side of the table, is that we are opposed to the retroactivity, which is built in, and we have said that a number of times.

Also, our attempt at the amendment was basically to mitigate the concerns that have been expressed. Absolutely, we have very serious concerns about families that are going to be, or could be, separated now for five years, and more, actually, because they can only apply after five years and there could be one, two, three, four, or five years of processing time, depending on the country they come from.

I don't know about Mr. Dykstra's office, but people are lined up at my office, people for whom even getting a visa is turning out to be a real problem, even to attend family functions—a tourist visa to come and view the beautiful country we have and to reunite with family for a short period of time. Surely that's what we want.

There are many parts of this bill that give us serious concern, but overall, we're concerned with the way the so-called "transformation" of immigration is going.

The Chair: Ms. Sitsabaiesan.

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

Especially after learning from the ministry officials that this would, at the discretion of the minister, retroactively apply to the 500-plus migrants who came on both the *Ocean Lady* and the *MV Sun Sea*.... The NDP's position was already against this, but now our position is that much stronger that we need to speak out against this.

I reach out to the government members to not push forward with this, because of the retroactive nature of it. I know the legal counsel we had here earlier was defining the difference between the retroactive nature of legislation and the retrospective nature of legislation, but I'm not going to try to talk about the differences.

In my understanding of the language, it's retroactive to the people who came here, and by the minister's motivation, when this bill came in a previous iteration, it was because of the migrant vessels. The migrants who came from Sri Lanka were the motivation behind this type of bill. Understanding that, I think it's safe to make a leap to these people who came, who fled the conflict in Sri Lanka, who risked their lives spending two months in a rickety cargo ship coming here—and we know that one of the people, one of the migrants on that vessel, perished on the journey to Canada. I've met many of these people. Quite a few live in my riding now, and they're still scared. Every time I speak to them, there's fear in their eyes, Mr. Chair, and a huge sadness because they're alone. Most of them are alone here and they're already separated from their families. Some of them have distant relatives, but they've lost their immediate families in the war or they're separated from them.

So these people are going to be dealing with the effect of war, a lifetime of war, compounded by their experience of detention that they've already gone through. They're now going through routine reporting with Immigration or CBSA officials, whoever they're reporting to, and now we're going to ensure they're not able to be reunited with their families. We're telling them, "Oh, well, you can't."

That's absolutely not right, Mr. Chair. These people, the people I have met who live in my community in Scarborough—Rouge River, are already contributing to the well-being of the community. They're active members of the community. Many of them volunteer at the tree plantings. Two weekends ago I had an organ donor clinic. One of them was volunteering with me at the organ donor clinic. They're contributing a lot to the benefit of our community and our country here already, and if they're not able to be reunited with their families, not able to have a real way to connect, to attach to this country, we're eroding the settlement process here in our country.

We know the conflict continues.

Sorry, I didn't hear.

• (1750)

Mr. Rick Dykstra: I said we're protecting...[Inaudible—Editor]

Ms. Rathika Sitsabaiesan: I think it clearly erodes the settlement process in this country. We know that the conflict continues.

For people to know that, for instance, they won't be able to sponsor their child left behind in their home country for at least five years is a scary feeling, after everything these people have been through and continue to go through.

I reach out to all members of this committee to not support this clause and to move forward without it.

Thank you.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Mr. Chair, I raised the issue because I thought it was important that committee members were aware of it.

I would request that we have a recorded vote.

The Chair: We're not quite there yet.

Mr. Kevin Lamoureux: When we do have the vote.

The Chair: Of course.

Monsieur Giguère.

[Translation]

Mr. Alain Giguère: I would just point out to you that Canada already is part of a system of digital fingerprints. The Automated Fingerprint Identification System is managed by the RCMP, but the RCMP is just Interpol's eyes and ears in Canada. It is the link between all Canadian police forces and Interpol. It is the way Interpol gets in and out.

We were told about one situation. I remind you about the testimony we have heard; I am sure you remember it. The Australians told us that, when they put this legislation into effect, they found themselves in a horrendous situation. Refugees were coming with women and children in boats that were getting more and more decrepit. They were being victimized by coyotes, as the smugglers are often called. The refugees were victimized even more by those people because, in order to avoid being separated for five years, they had to bring the women and children with them.

In Italy, the situation was even more tragic. They had a policy of interceptions at sea and a ban on bringing in women and children for a certain number of years. So then, unfortunately, there was a

collision at sea that resulted in 40 casualties, basically women and children who could not swim. That is the kind of situation that we will be encouraging, if we are not careful.

The Australians have had the advantage of going through the situation before us. They have suffered through it more than we have. We are just talking about two boats in 10 years. They get almost two boats per month. Their population is not as big as ours. They have confronted the situation and they have experienced the effects. We should recognize that and understand the dangers in the situation. The irony of the consequences is particularly undesirable in that we are now encouraging refugees to get into dangerous boats with their women and children. That makes them even easier prey for the coyotes.

Thank you.

[English]

The Chair: We are on clause 81, and there's been a request for a recorded vote.

(Clause 81 agreed to: yeas 6; nays 5)

• (1755)

Ms. Jinny Jogindera Sims: Chair, I have a request from one of the committee members.

Could we take five minutes while they get a bite to eat? The food has been here for awhile and it's getting cold.

The Chair: Is that the wish, or do you want to proceed?

An hon. member: Proceed.

(Clauses 82 and 83 agreed to on division)

The Chair: Members can get up and I'll try to be lenient for voting back and forth.

We have a new clause, 83.1, which is government amendment 9, on page 98.

Mr. Dykstra.

Mr. Rick Dykstra: Chair, this simply follows up on the previous two amendments that were made, although this does become a new clause within the bill, 83.1, and it provides the authority, upon royal assent, to terminate the pre-removal risk assessment applications if an application was made before 12 months or earlier since the last rejection or determination that an application for protection was withdrawn or abandoned.

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: We will be opposing this amendment. This is a retroactive application of the bill. What it does is it terminates the pre-removal risk assessment requests that were made quite legitimately by people who were playing with the rules that existed at the time they made their application. We believe this kind of retroactive application is unfair and treats people very shabbily.

The Chair: Debate?

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

(On clause 84)

The Chair: Amendment G-10 on clause 84, Mr. Dykstra.

Mr. Rick Dykstra: Chair, the basic two changes here, as outlined, actually are not deemed a technical amendment; we're calling them a coordinating amendment.

First, it enables the bar to access a pre-removal risk assessment and exemptions to the bar to come into force at exactly the same time. For greater clarity, it prohibits a pre-removal risk assessment applicant from designated countries of origin from accessing another pre-removal risk assessment for a period of 36 months since their last pre-removal risk assessment was rejected. Although I know it's not supported by the opposition, it's consistent with the previous amendments we've made.

Ms. Jinny Jogindera Sims: We will be opposing this.

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

The Chair: Amendment G-11, Mr. Dykstra.

Mr. Rick Dykstra: It's consistent with what I've just stated, Chair. I won't repeat myself, other than to say it is consistent with what we have entertained and passed as amendments previously.

The Chair: Yes, Ms. Sims.

Ms. Jinny Jogindera Sims: We will be opposing this because once again it raises the bar on pre-removal risk assessment applications for people in designated countries, and we believe this is grossly unfair and unkind.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Chair, whether it's amendment G-9, G-10, G-11, or G-12, in principle we do not support these amendments.

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

(Clause 84 as amended agreed to on division)

(On clause 85—*Order in council—same day*)

● (1800)

The Chair: Amendment G-12, Mr. Dykstra.

Mr. Rick Dykstra: Chair, we're not quite done, but we're getting close to the end. I see and hear that you're losing your voice, so it's fit that we're coming to a close here.

The Chair: Indeed.

Mr. Rick Dykstra: In the changes as are stated here, the government's amendment to the coming into force, which is clause 85...this amendment we're making, which everyone received a copy of, was made so that subsections 38(1) and 38(2) would come into force on a day or days to be fixed by order of the Governor in Council. It's a very technical amendment, in other words.

Ms. Jinny Jogindera Sims: We will be opposing this.

(Amendment agreed to)

(Clause 85 as amended agreed to on division)

Ms. Jinny Jogindera Sims: Are we now back to page 1?

The Chair: We are.

Ms. Jinny Jogindera Sims: I have a very brief amendment.

The Chair: Proceed.

Ms. Jinny Jogindera Sims: I would like to be able to read it.

I move that Bill C-31 in clause 1 be amended by replacing lines 4 and 5 on page 1 with the following:

1. This act may be cited as the Punishing Refugees Act.

The Chair: That is not admissible.

Ms. Jinny Jogindera Sims: Mr. Chair, if I may, I am not going to get into, at this late hour, challenging the chair, but—

The Chair: I have just made a ruling. You can't debate it unless you challenge. I am saying that it is inadmissible. There is no debate.

Mr. Kevin Lamoureux: On the clause itself—

Ms. Jinny Jogindera Sims: I would like to speak on the clause as well.

The Chair: Ms. Sims is first.

Ms. Jinny Jogindera Sims: Mr. Chair, we have sat here for a great number of days. We've listened to lots of testimony. I wish I'd had time to go over much of that testimony, but I didn't, not in as much detail as I would have liked. Now we've been through a lengthy period of clause-by-clause.

I've often heard the rationale that the bill is actually for getting at the smugglers. But the more I've looked at the bill as I've gone through it, the more I see that it's about punishing refugees. That is one of the reasons I wanted to move an amendment to that effect.

I want to just comment on the title of the bill. I want to say that there is very little in the bill that actually addresses punishment for smugglers, who already have the maximum punishment, a life sentence, and who already have fines of up to a million dollars. All of those are there.

What this creates for refugees is a two-tiered system. Depending on how you arrive and where you arrive and what kind of grouping you arrive in, you could actually be designated an irregular asylum seeker. Once you are designated, you can actually be kept in a detention prison for up to a year. Then for five years you cannot have any travel papers. You don't have any status. You can't go anywhere. You can't apply for your family to come and join you. You can't go and visit your family.

I can't imagine why we would not be calling this piece of legislation the Punishing Refugees Act.

Also, at this time, I want to acknowledge that there was quite an abhorrent part of this legislation, which would have retroactively sought cessation based on whether the country had changed its standing, so to speak. We're glad to see that gone. But we still feel that this bill is fundamentally flawed and fundamentally changes our refugee policies.

Numerous witnesses gave testimony as to how this bill will contravene the charter, the Constitution, and our international obligations. So it is with a great deal of regret for me, as a Canadian citizen, and now as a parliamentarian, that I see legislation that so lacks compassion.

We heard the representatives from the Anglican Church talk eloquently about the work they do in this area and the problems they see in this legislation. They pleaded with all of us to come out of this process with something that would not be so punitive towards some of the world's most vulnerable people who arrive on our shores.

By the way, our current legislation, from Bill C-11, which is the Balanced Refugee Reform Act, absolutely gives the government the ability to hold people in detention, pending identification and a security check to make sure they're not a risk to Canada's security. We have that option. As a matter of fact, there are people from the two boats that arrived many years ago who are still in detention. That is possible.

The other two-tiered aspect of the bill is related to the designated countries and the fact that within designated countries there can be pretty serious violations, either towards a particular group or in a particular part of that country.

When we look at this bill overall, the one adjective, verb, and adverb that keeps coming up over and over again is built on the word "punishment", whether you say punitive or punishment.

• (1805)

I am very, very disappointed that this bill is here, and I will be voting against the bill.

I do want to acknowledge once again the moves made by the government, by the minister, to address some concerns, and I will acknowledge that those are baby steps.

I always believe in positive reinforcement, and I hope when you get back and share with the minister—he might even be listening to all of this—that he will listen to some of our other concerns and take a look at the pile of amendments. Perhaps those will happen at the next stage. As you said, I always live in hope, and I am an optimist.

Mr. Chair, we are going to be opposing this bill at this meeting. We're finding it very hard to swallow the title that has been given to this legislation. It's very, very difficult for me to live with that title, but as you said, I'm not allowed to amend that. I still say I will be calling this act the Punishing Refugees Act.

Thank you.

• (1810)

The Chair: Mr. Lamoureux.

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

I realize that all the committee members, on all sides of the committee room, have been very patient in listening to a lot of presenters, witness comments, so I'll try to keep my comments short, with the idea of being able to speak at third reading.

I'm hopeful that the Parliamentary Secretary to the Minister of Immigration will recommend to the government not to put any time limits or restrictions—

The Chair: Are you speaking on clause 1?

Mr. Kevin Lamoureux: Yes, absolutely. I recommend not putting any sort of time limit in terms of what might happen in third reading. We should try to allow for full and open debate.

I say that, Mr. Chair, because when we look at the title of the bill, it is very clear. The idea behind it was to try to improve the system. Based on that, I would argue that ultimately this bill attempts to deal with a crisis that really does not exist.

I say that because this bill can be broken into three parts, if I can generalize it very briefly.

One of them deals with the whole concept of speeding things up for the refugees. I believe that everyone inside this room and all of the witnesses who came before the committee recognize that the current system needs to be sped up. It's better for the refugees and the taxpayers. It's better for everyone. We recognized that a couple of years back. That's why we had Bill C-11, the Balanced Refugee Reform Act. That bill did receive good, solid support, and it dealt with the issue of speeding up the process.

The second thing was for the minister to deal with human smuggling. This bill takes into account Bill C-11 and Bill C-4. You'll recall, Mr. Chair, that Bill C-4 is still on the order paper. It's all about the *Sun Sea*, the *Ocean Lady*, and human smuggling. I often make reference to the picture of the Minister of Immigration and the Prime Minister standing on the back of I think the *Ocean Lady*, but it might have been the *Sun Sea*, trying to highlight this "crisis". The reality is that the system wasn't broken; the system was actually working.

When my colleague from the New Democratic Party made reference to both the *Sun Sea* and the *Ocean Lady*, there were well over 550 refugees. The current system identified security risks, and those individuals—I believe there were six of them—are still in detention today because the Government of Canada has concerns in regard to that. There should be no doubt among committee members that there is nothing wrong with the system we have here today.

The third and broader issue is biometrics. As I pointed out in an earlier comment, this isn't something new. It's been happening throughout the world. In fact, it was first introduced somewhere around seven or eight years ago as a pilot project. I think the committee recognized that fact, and that's the reason we were investigating the issue of biometrics and how it might be able to benefit Canadian society going forward.

It would have been a whole lot better to have completed that study, reviewed the pilot project that was initiated years ago, and then developed a separate piece of legislation in order to deal with that. Then we could have had witnesses or whoever else participate to have better definition or clarification of the regulations to address some of the questions that were being posed.

In principle, we have been consistent in saying that we do not support Bill C-31 because it does establish two tiers of refugees. There is the whole concept of mandatory detention. Even though I acknowledge that after listening to the committee and the public, the government and the minister did recognize that they had made a mistake—and that's a good thing—we are very concerned about this family separation issue. That's why I asked for a recorded vote on clause 81. I wanted to make sure that it was perfectly clear and that people in this committee realized that we were preventing families from being able to reunite, or at least this minister was.

From an opposition point of view, I can tell you that the Liberal Party will be watching very closely what this minister does and how he decides to use his new power potentially against those victims—I underline the word “victims”—of the *Sun Sea* and the *Ocean Lady*. They have come from a country in which they were victims. Is this minister going to revictimize them? We'll have to wait and see, but rest assured, this is an issue the Liberal Party will be following very closely.

•(1815)

We are concerned with the timelines. There's so much within the legislation, and that's why, at the end of the day, I believe we would have been far better off, at the very least, to bring back this bill six months from now. How could we make this a bill that would deserve the title we're giving it? Right now, I don't believe it deserves the assigned title.

If we were to allow more time and genuinely fix the bill, there might be some merit for this particular clause, but as it stands right now, we do not support clause 1. I look forward to the bill entering third reading and debate in the House, where I'll be able to add a few more comments from my perspective and the perspective of the Liberal Party of Canada.

Thank you, Mr. Chair.

The Chair: Madame Grogue.

[Translation]

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

As Ms. Sims has just said, we are of course opposed to this bill. We said so from the outset. The bill is a blind step backwards, because, as the title does not indicate—

[English]

The Chair: Remember, we're on clause 1.

[Translation]

Mrs. Sadia Grogue: Okay.

The title of this bill is neither just nor fair, it is quite the opposite. New areas of refugees' rights are being introduced. One of those areas, the one that creates two categories of refugees, runs counter to the basic rights found in the Geneva Convention. The notion of retroactivity in putting this legislation into effect is fundamentally unconstitutional. As some witnesses have told us, we also know that there will be a lot of challenges that will end up in court and will cost enormous amounts of money as a result. That has not been considered.

As for the mandatory detention, we have not considered the consequences for children and families, unfortunately. This is a vital point; the discussions we have had, the views we have shared and the amendments we have proposed have unfortunately fallen on deaf ears.

I see, in fact, that very few of our amendments have been adopted. I see that as ignoring the consequences that this bill will have on human lives.

•(1820)

[English]

The Chair: Okay.

Anyone else?

I undertook that we would be lenient in getting people back to the table to vote, so we're about to vote.

(Clause 1 agreed to on division)

The Chair: Shall the title carry?

Some hon. members: Agreed.

Ms. Jinny Jogindera Sims: On division.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

Ms. Jinny Jogindera Sims: On division.

Mr. Rick Dykstra: As this is our last vote on the bill, I would ask for a recorded vote.

The Chair: Madam Clerk, we're voting on the bill as amended.

(Bill C-31 as amended agreed to: yeas 6; nays 5)

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

Ms. Jinny Jogindera Sims: Next session.

Some hon. members: Agreed.

Mr. Rick Dykstra: Hold on a second.

Not Ms. Sims's amendment, I'm assuming only the....

The Chair: I will be reporting it on Monday.

Mr. Rick Dykstra: Thank you, Chair.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

Ms. Jinny Jogindera Sims: Chair, there was a suggestion earlier that we go back and have a discussion on my notice of motion.

The Chair: That was defeated.

I haven't finished. I'm going to give a short speech, in fact.

Ms. Jinny Jogindera Sims: Oh, you're going to make a speech?

The Chair: Yes. Good luck hearing it.

I just want to say I've chaired a few committee meetings, and some of them have been very contentious. Members on all sides have been very courteous to each other. It has been a pleasure chairing this committee.

I want to thank the members of the department who came to advise us. I want to thank the clerks and the analysts who helped us throughout the hearings. I want to thank the translators. I'm sorry that sometimes we went too fast. Thank you to the officials.

Is there anyone else I should be thanking?

It has been a pleasure. Congratulations. I know the opposition has indicated it's not pleased with the bill. That's the way it is. I'm sure there will be spirited debate in the House for third reading. Thank you very much.

Mr. Dykstra is next, and then Ms. Sims.

Mr. Rick Dykstra: Thank you, Chair. I appreciate all your comments and the thanks you passed around. I won't repeat them, other than, on behalf of the government, to endorse them. I certainly agree, and we agree with all the comments you've made.

I remember that the ending of Bill C-11 and the result of the vote was a little different from what it was today, but I do want to say, as I said throughout our time of going through clause-by-clause—I may not have mentioned this during the witness phase—that I do believe in our process. I do believe in the system.

Every time I have been involved, since I've been elected federally, in moving legislation forward, second reading.... Many folks out there don't know the process we use to pass a piece of federal legislation, but the process we use is one that does have checks and balances. It has checks and balances whether we have it from a minority government perspective or whether we have it from a majority government perspective, and although those checks and balances may be a little bit different when you put the two against each other, the fact is that we came into this process, from a government perspective, listening and potentially making amendments. The outcome of what we see in Bill C-31 is from amendments that we believe came forward based on advice, based on legal opinions, and based on the opposition's perspective on this.

I am proud of the fact that we, as a government, as a committee, and as members of this committee, actually moved this forward understanding that no one can say that the 29 hours—close to 30 hours—of time we spent listening to witnesses and the additional countless hours we spent over the last couple of days moving through this bill have not been useful in making it a better piece of legislation.

Whether or not at the end of the day you support that piece of legislation is not nearly as important as the fact that the process we have in the Canadian parliamentary system actually works. It's proven through this piece of legislation that citizenship and immigration can and does work. I truly believe this is a better bill today than it was before it came to committee, and I will be certainly making those comments and statements at third reading.

This may not have the coming together of all the critics and the minister in the middle of the House of Commons shaking hands after third reading, but it certainly has us being able to look across the table and understand that the process we have gone through over the last number of weeks is one in which we have listened and we have worked with each other.

On the chair's comments with respect to how we've respected each other through this process, it's too bad people in the public say that question period is symbolic and that that treatment of each other is what the federal Parliament is all about. If you were to watch what happened here at committee—nobody would want to watch all of these countless hours—the fact is that we worked very well together.

It's a compliment to Ms. Sims, who jumped into this literally with the fire at her feet, based on the fact that she got the position less than 48 hours before we started clause-by-clause. My congratulations to her for a job well done on behalf of the official opposition.

Also Mr. Lamoureux, because he is a House leader, wasn't able to attend all of our meetings with respect to witnesses, but, Kevin, I can assure you that even when you're not here, your presence is heard.

Thank you very much.

I also want to thank my colleagues, who may not have said a lot here over the last couple of days, but they have repeated on a regular basis that this is a committee that we thoroughly enjoy sitting on. We have not only learned a great deal, but we feel we're having a pretty strong input into the process here in Ottawa.

Thank you very much.

• (1825)

The Chair: Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you, Mr. Chair.

I also want to echo your thanks to the officials, to the staff, to the clerks, to our interpreters, and I would say to all of our staff, who have been absolute champions throughout this in supporting us. I would also acknowledge the work and the sincerity that all the MPs have put into the process. I do want to acknowledge the baby steps that have been taken by the government side and the response you made once you heard the concerns.

I also want to acknowledge and thank—I know they are not in the room right now, but I'm sure they are in spirit—all the witnesses. No matter which one of us requested them to come here, they belong to all of us. All the witnesses, who came out of their way, some of them travelled across the country, came and shared their passion and their advocacy with us. We also heard the first-hand stories of some refugees—and I think that takes a lot of courage—on how they've taken up the battle to be advocates for others because they know the kinds of struggles they went through themselves.

I believe in process. I absolutely believe that there is a way to work together respectfully. You can be really hard on the issues and go after the issues really, really hard, but at the same time I believe that all of us do want to try to make things work.

It's in light of this that I'm going to make my final request of my colleague, Mr. Dykstra. I know my motion was ruled out of order and I was not able to discuss it, but I am really putting forward a very strong case that we in this committee make it a top priority next week to start discussing the elements of the budget that are directly impacted or directly have anything to do with immigration.

• (1830)

The Chair: Actually, the motion was defeated.

Ms. Jinny Jogindera Sims: Yes, the motion was defeated.

I'm an optimist. That's why I remained a teacher all these years. You have to be an optimist to be a teacher. I would say that there are good reasons for that, because when we're looking at our immigration policy, we want to do it in a very deliberative manner. I'm just worried that we won't have the time we need in the House, buried in 400-plus pages. I'm not a budget specialist, but I'm certainly trying to learn as much as I can about immigration. I think it would be difficult for all of us to discuss everything.

I do want to thank Mr. Dykstra. He's been very respectful, we've worked well together, and I look forward to working together in such a convivial manner in the future. In future, he will vote for my amendments and he will make it unanimous.

Thank you.

The Chair: Mr. Lamoureux.

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

Being a man of few words, what do you say when both of my colleagues make reference to the very kind words in terms of the proceedings? One of the things that I really admire and respect is how individuals understand and appreciate the roles we play. We have those two halves, if I can put it that way. When we're in our role, we have that hat on, and when we're outside that role, we continue on as good people and treat people with respect.

I appreciate the comments that were put on the record. I share with you the gratitude, and I just want to say thank you to all those who were involved, including our personal staff to the people who make this happen.

With that said, I'll leave it at that. Thank you.

The Chair: This meeting is adjourned.

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