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Chair

Mr. Robert Oliphant

Standing Committee on Public Safety and National Security

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• (1640)

[English]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I will call us back to order and first give my apologies to the officials and our many guests out there who have been waiting for us during the other piece of business that we had to accomplish today.

Thank you to the officials for attending. Obviously you don't have statements, but you're here to address any questions the committee members might have as we consider the over 30 amendments to Bill C-23.

We've been through clause-by-clause a few times now, members, and I'm getting better at it. You're already good at it.

We'll begin. As usual, I'm going to be suggesting that we start with clause 2 of the bill and end our consideration by going back to clause 1, which is the short title of the bill.

(On clause 2)

The Chair: With respect to clause 2, there are two amendments being suggested: LIB-1 and LIB-2. However, I want to draw to the attention of the committee that LIB-3, which is on page 3, and LIB-5, which is an amendment to page 5, are consequential to LIB-1 being adopted. Therefore, the vote on LIB-1 will apply to amendments LIB-3 and LIB-5 as being necessary consequentially from the adoption of LIB-1.

Would someone like to move the first amendment?

Ms. Damoff.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I'll move it. Do you want me to speak to it or all three briefly?

The Chair: Sure.

Ms. Pam Damoff: Basically, it has to do with training. It's something that we heard about, and it's a concern that I know all of us shared. We just wanted to make sure that the pre-clearance officers working in Canada understood our Canadian laws and the Charter of Rights and Freedoms. This will put that into the legislation, rather than it just being done as a matter of course. It would actually be in the legislation that this training would be required.

The Chair: So the true substance of the three motions really comes in LIB-5—

Ms. Pam Damoff: That's correct.

The Chair: —which is regarding education and training with respect to Canadian law, but it is pre-pumping in LIB-1 and LIB-3.

Are there any questions about LIB-1?

Monsieur Arseneault.

[Translation]

Mr. René Arseneault (Madawaska—Restigouche, Lib.): If I understand correctly, if amendment LIB-5 carries, then amendments LIB-1 and LIB-3 will automatically be carried as well.

[English]

The Chair: Yes. We are voting on LIB-1. LIB-3 and LIB-5 will automatically be assumed to be carried.

Mr. Clement.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): I was just thinking out loud. I apologize.

The Chair: Seeing no other discussion, shall LIB-1 carry?

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

The Chair: There's a second amendment to the same clause, amendment LIB-2, which is an addition. Who would like to speak to that?

Monsieur Arseneault.

[Translation]

Mr. René Arseneault: I will speak to this motion since I introduced it.

The amendment could not be any clearer. Its purpose is to clarify the French term "loi fédérale". In the context of intra-Canadian relations, we know what an act of Parliament is. However, in the context of an act such as this one, under which an American officer may enter Canada and exercise a right, the term "Act of Parliament" stated in English may also mean "*federal legislation*". In the United States, all legislation is federal.

So the idea here is that the term "loi fédérale" refers to an act of the Parliament of Canada. That is all.

[English]

The Chair: It's the Canadian Parliament, obviously.

Are there any questions on that amendment?

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

(Clause 2 as amended agreed to)

(On clause 3)

The Chair: I'll introduce clause 3. There are no amendments to it. There could be discussion on it, I guess, as it's binding on Her Majesty.

(Clause 3 agreed to)

The Chair: Amendment LIB-3 has carried because it was consequential to LIB-1. Now we come to the amended clause 4.

(Clause 4 as amended agreed to [See *Minutes of Proceedings*])

(On clause 5)

The Chair: With respect to clause 5, we have amendment LIB-4. Again, we have consequential amendments. Amendments LIB-8 and LIB-9 on page 27 and page 30 respectively are consequential, and therefore the vote on LIB-4 would apply to LIB-8 and LIB-9.

Monsieur Picard.

[*Translation*]

Mr. Michel Picard: The purpose of this amendment is to clarify what a "border services officer" is and to ensure that this single definition appears in the legislation.

[*English*]

The Chair: Are there any questions about amendment LIB-4 amending clause 5?

• (1645)

Hon. Tony Clement: I have a question about whether it brings this out of line with other enabling legislation for the CBSA.

The Chair: Perhaps we'll turn to an official. The question is whether this is out of line or, I would assume, in line with other legislation respecting officers of the CBSA.

Ms. Radi.

Ms. Madona Radi (Director, Program and Policy Management Division, Canada Border Services Agency): I'm sorry. Could you repeat that? I didn't hear it.

The Chair: Would you repeat that, Mr. Clement?

Hon. Tony Clement: My question was whether this amendment, by changing significantly the definition of "border services officer", will bring it out of line with other enabling legislation respecting the CBSA.

Ms. Madona Radi: No. Right now, our CBSA officers gain most of their authority under subsection 2(1) of the Customs Act, so when this bill was written, it was written in a way such that their authority needs to be designated. However, right now we do not designate our officers, so once you become a BSO, a border services officer, automatically you have full responsibilities to conduct the immigration examination and the customs examination. We do not need to administratively designate each one of them. This amendment just makes sure that the definition is the same as the one under subsection 2(1) of the Customs Act.

Hon. Tony Clement: Is it consistent with subsection 2(1)? Is that what you're saying?

Ms. Madona Radi: Yes, it is consistent.

Hon. Tony Clement: It is consistent. Okay.

The Chair: Very good.

Are there any other questions with respect to amendment LIB-4? Seeing none, we'll vote on the amendment.

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

The Chair: Consequentially, amendments LIB-8 and LIB-9 will be deemed to have been adopted.

Is there any other discussion about clause 5?

(Clause 5 as amended agreed to [See *Minutes of Proceedings*])

(Clauses 6 to 10 inclusive agreed to)

(On clause 11)

The Chair: We move now to clause 11, which does have an amendment. However, it's already been approved because it's consequential to amendment LIB-1.

Hon. Tony Clement: Do we vote?

The Chair: We don't need to vote on the amendment, but we need to vote on the clause.

Hon. Tony Clement: I see. Okay.

The Chair: Are there any questions about clause 11, which is significantly modified with the amendment, LIB-5?

(Clause 11 as amended agreed to)

(On clause 12)

The Chair: On clause 12, we have an amendment from the Green Party.

Ms. May, welcome to public safety and national security.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chairman.

As you may recall, I want to put on the record that I'm not here because I'm grateful for the opportunity to be here, but am acceding to the fact that due to the coercive motion passed by this and every committee, I must be here if I want to put forward amendments, which I have the right to do. Right now, under the Standing Orders of the House of Commons I would be entitled to put forward substantive amendments at report stage but for the motions that require me to be at committee.

With that out of the way, I certainly know that none of you personally intended to increase my workload and not allow me to make amendments to which I have the right at report stage, I'll dive right into Parti vert 1. They're prefaced with "PV" in the House's practice, so Parti vert 1, and I think by the way, Mr. Chair, it's because if we marked them as "G" for "Green Party", everyone would think they're government amendments, for example, G-1, and so it's "Parti vert".

This is a response to evidence that you have heard on, under clause 12 of the bill as currently drafted, regarding duties, taxes and fees that are collected. It's unclear whether a traveller has the right to seek a judicial remedy in Canada or in the United States for an administrative monetary penalty that's assessed by the inspecting party.

Under the review provision for Canadian customs matters, where penalties have been assessed by the Canada Border Services Agency, a formal review process gives an opportunity to a traveller to challenge the appropriateness of the penalty.

You will note from the evidence of the Canadian Bar Association and their recommendation that there should be greater clarity around those assessed penalties that are collected in the U.S. on admitting persons or goods into the U.S. that would not be subject to judicial review in Canada.

For greater certainty we've added suggesting after line 27 on page 5 another subsection:

(2.1) For greater certainty, any monetary penalties or other civil sanctions imposed in the course of preclearing travellers and goods are subject to any review provided for under the laws of the United States.

I hope this will be an acceptable amendment.

• (1650)

The Chair: Monsieur Picard.

[*Translation*]

Mr. Michel Picard: I was a customs officer in a previous life.

Every act has its own scheme of sanctions and penalties. I think it is wrong for the Canadian act to tell the United States how to do its job.

[*English*]

The Chair: Are there any other comments?

(Amendment negated)

(Clause 12 agreed to)

(Clause 13 agreed to)

(On clause 14)

The Chair: We have an amendment to clause 14 from the NDP. It's NDP-1.

Mr. Dubé.

[*Translation*]

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

Broadly speaking, amendment NDP-1 addresses a concern about the extent of situations in which an offence is committed. In other words, the amendment would ensure that offences in which American preclearance officers might intervene are related to the travel. Here we are talking about wanting to avoid a situation in which someone might be in violation of federal legislation of a more administrative nature. It might be a tax matter, for example. The offence must apply to people who present a clear and present threat.

[*English*]

The Chair: Is there further discussion on the amendment?

Mr. Picard.

[*Translation*]

Mr. Michel Picard: I understand Mr. Dubé's comment. The problem is that a customs officer of a country enforces all of his or

her country's acts and all acts under which mutual agreements are reached between customs authorities and the various federal agencies, depending on the host country. Consequently, we cannot require American agents in Canada to limit or not limit their actions in accordance with another act that does not concern Canada's legal system.

I recommend that we oppose this amendment.

[*English*]

The Chair: Is there further discussion?

Ms. Damoff.

Ms. Pam Damoff: Yes, just very quickly, along with this and some others that have been put forward by the NDP, I think it's important to bear in mind that the legislation is working within the framework of an agreement that's already been negotiated. I understand that this particular amendment is inconsistent with articles of that agreement. There's a number of these that I won't be supporting, mainly because they are not consistent with the agreement, and I don't think we want to go back and negotiate a new agreement. We need to respect what was negotiated before, which is in this bill.

I'm not going to say that every time we get one of those clauses, but I think it's important to remember that we are dealing within the framework of a prior negotiated agreement between the previous government and the previous U.S. administration.

The Chair: What I'm hearing is a respect for the amendment, but a difficulty in accepting it because of the agreement.

Ms. Pam Damoff: That's right.

The Chair: Monsieur Dubé.

• (1655)

[*Translation*]

Mr. Matthew Dubé: We may be mistaken. Perhaps the officials here present can guide us. However, we think this does not violate the agreement.

Furthermore, in response to Mr. Picard's argument, if I understood it correctly, since American officers are on Canadian soil, we have every interest in setting limits on situations in which they may intervene. That is the gist of the amendment.

[*English*]

The Chair: I'm going to turn to Ms. Wherrett for help with this question.

Ms. Jill Wherrett (Acting Assistant Deputy Minister, Portfolio Affairs and Communications Branch, Department of Public Safety and Emergency Preparedness): Yes, certainly.

In fact, this amendment is inconsistent with the agreement. It's inconsistent with article VI, paragraphs 10(f) and 20(g). They specify that in the pre-clearance area and perimeter, pre-clearance officers respectively shall be authorized to detain not just travellers, but any person who is believed to have committed an offence under host party law.

That enables the pre-clearance officer to detain a person and transfer them to Canadian authorities. For example, requiring that offences be connected only to travel might mean that a pre-clearance officer would not be able to address a suspected offence, such as aggravated assault or murder, which may not be connected to the individual's travel through pre-clearance. If they didn't have this authority, they could not refer that person to Canadian authorities.

The Chair: Monsieur Arseneault.

[*Translation*]

Mr. René Arseneault: We have already responded.

[*English*]

The Chair: Are there any other comments? We'll vote, then, on NDP-1 amending clause 14.

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

(Clause 14 agreed to)

The Chair: We now have seven clauses without amendments.

Ms. Watts.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): I just want to speak to clause 17.

The Chair: Okay. I'm not going to do them all at once. I want to make sure that you feel very free to stop the voting to discuss a clause.

Monsieur Dubé.

Mr. Matthew Dubé: I'm uncertain, but I suspect Ms. Watts and I might want to raise the same point. I also have a point for clause 17 when we get to it.

The Chair: I wasn't going to take them all together. I just want to make sure you knew—

Ms. Dianne L. Watts: We're just stopping you in case you were

Voices: Oh, oh!

The Chair: I'd love to get us out early, but I wanted to make sure you knew that there weren't amendments coming right now and that you always do have the chance, and I will look around to see if anybody has a point of discussion.

(Clauses 15 and 16 agreed to)

(On clause 17)

Ms. Watts.

Ms. Dianne L. Watts: Thank you very much.

Looking at this, it's identifying individuals in the pre-clearance area and states:

Only the following persons may enter a preclearance area:

This is land, rail, marine, and air, and this just speaks to border officers and police officers. I think one of the things that we should embed in there is employees holding a marine transportation security clearance made under the marine transportation security regulations. They're already cleared by CSIS, the RCMP, CPIC, and all of those

things, and inserting that would cover off the marine aspect for the cruise ships. That was my point in adding that piece.

The Chair: Okay.

Monsieur Dubé.

Mr. Matthew Dubé: I would go in the same direction as Ms. Watts to resolve the issue raised by Mr. Ashton during his testimony, which we all recall. I have the text for an amendment that would do what I believe Ms. Watts is proposing. I don't know if I can read it and then potentially move it.

The Chair: If you have a paper copy for the legislative clerk, that would be very good.

Mr. Matthew Dubé: Sure.

[*Translation*]

We would add paragraph (f) to clause 17, which would read as follows:

"(f) employees of a facility holding a Marine Transportation Security Clearance made under the Marine Transportation Security Regulations, SOR/2004-144."

● (1700)

[*English*]

I have a few copies of this, but not enough for all members. I can always—

The Chair: No, I think the clerk can get some extra copies made. I think people should see it. I would like the officials to have it as well, just in case we have any questions for them.

I want to make sure that we handle this very well and that people see it. I really think people need paper copies, so I think it's appropriate that we suspend for a few minutes while we get them made.

● (1700)

_____ (Pause) _____

● (1705)

The Chair: I think we're good to go.

Mr. Dubé, everyone has the motion now. I think it would be appropriate for you to recap where we are with the motion and what you would like us to consider with it. I know that Ms. Watts is supporting it as well.

Mr. Matthew Dubé: Sure.

As I said, I think we heard some very legitimate concerns from Mr. Ashton on behalf of the workers he represents. With regard to this notion of giving extensive powers to a foreign entity to essentially screen and decide who may or may not work, beyond the delays that may cause—we obviously understand that—there's certainly the risk of discrimination and profiling. We have faith in our own government, or we like to, anyway, but we don't want to start being accountable to another government, even if it's our closest neighbour.

I believe this amendment goes toward fixing that issue that's been brought to our attention as a committee.

[*Translation*]

The Chair: Mr. Picard, go ahead.

Mr. Michel Picard: I simply want to make sure that we are talking about the same person and that he is the gentleman who came and told us about storage.

When I raised the matter of customs programs with that person, I was not sure he understood the mechanism. I referred to the customs program C-TPAT, which requires authorization by both parties for an individual to cross the border. The principle of getting authorization from both sides of the border for a person to access a location goes to the very heart of this kind of bilateral agreement. A warehouse, for example, is a particular place that does not necessarily have a customs area. However, one could manage goods and materials there that could eventually leave the country under an agreement such as the one we are establishing. That is precisely why we use the terms "the operator of a facility" in paragraph 17(e).

On a case-by-case basis and depending on needs, safety checks and necessary approvals under the agreement between the two parties would thus apply in specific cases, and police officers, customs officers, and travellers who have planned to cross the border would not be subject to this.

I think paragraph 17(e) includes precisely what Mr. Dubé is talking about. So it seems to me the amendment would be redundant and pointless.

Thank you.

[*English*]

The Chair: Just before I recognize Ms. Watts and then Mr. Dubé, I want to note for committee members that Mr. Ashton, who was just referred to, is in the room today.

Thank you for your testimony, and thank you for being here.

Ms. Watts.

Ms. Dianne L. Watts: That doesn't cover it at all. I'll use the Vancouver cruise terminal as an example. You're not crossing into the United States. These are people who are actually working on a dock, in a marine area, or on cruise ships. You are not going to another country.

This speaks to a specific marine transportation security clearance and also cites the regulations. They go through CSIS. They go through.... It's already done, but they're not identified here within this pre-clearance area.

The issues that were brought up are very relevant, because a lot of times, as I said, with the cruise ships, you're not going into the United States, so you would never give that information to the U.S. You're not going into the U.S. You're on Canadian soil. You remain on Canadian soil.

• (1710)

The Chair: Mr. Dubé, I'm wondering whether you would like to speak first or whether you'd allow me to turn to the officials for their comments.

Mr. Matthew Dubé: Go ahead.

The Chair: Perhaps the officials could comment on their understanding of whether the amendment adding new paragraph

17(f) is redundant, given paragraph 17(e), or is significantly different or whatever.

Ms. Wherrett.

Ms. Jill Wherrett: If you look at clause 17, we have paragraphs 17(d) and (e). The first states:

(d) persons who are authorized by the Minister under section 45 or by regulation

That would include the marine transportation security regulations, which will be amended to address this.

Paragraph 17(e) states:

(e) subject to any regulations, persons who are authorized by the operator of a facility.

Those are broadly worded because we are talking about pre-clearance in many different modes of transport, with employees in many different facilities, whether it's marine or rail or air. We didn't exclusively list all of the different types of employees, but rather have it provided so that it can be addressed by regulation. It would be addressed through that.

The Chair: Thank you.

Mr. Dubé.

Mr. Matthew Dubé: Thank you very much.

I think that just forces me to reiterate the concern I have about the fact that we're at the mercy of regulation on so many of these particular issues I raised. When we heard from officials the first time, I think we were talking about how our law applies to Canadians on Canadian soil. That we would have to defer to any changes the minister will make to regulation, which is not subject to parliamentary debate or vote or anything, is something that, with all due respect to the officials, I certainly find very troubling.

With regard to paragraph 17(e), I'm wondering if that still feeds into Mr. Ashton's concern that was raised on behalf of the people he represents insofar as it mentions the "operator" of a facility. One of the specific concerns raised was the Department of Homeland Security in the U.S. sharing information with their employer without the appropriate transparency for them when going through the hiring process. Leaving them at the mercy of the operator still leaves us, I believe, with that problem in play. I believe it's extremely problematic when we have an inability to actually put in legal protection and when, once again, with all due respect, this is at mercy of regulation.

[*Translation*]

The Chair: Now we will move on to Mr. Arseneault. Then Mr. Picard and Ms. Damoff will speak.

Mr. René Arseneault: When I read the English and French versions of paragraphs 17(d) and (e) of the bill, I understand what Ms. Wherrett was explaining to us. I am less concerned about the possibility that people working at the port of Vancouver, for example, might be unable to do their work. We are talking about some 200 men here. I met that group.

In paragraph 17(e), it seems important to use the wording "sous réserve des règlements". In English, it reads "subject to any regulations". In fact, before focusing on the words "sous réserve des règlements", I would like to ask you a question about paragraph 17(e), which refers to "persons who are authorized by the operator of a facility". In the case of a Canadian seaport, the operator would thus be the port, not the person assigned to preclearance.

That is what is meant in that paragraph, is it not?

[English]

Ms. Jill Wherrett: Yes, it would be the operator of the facility, whatever operator that happened to be in the case in question.

[Translation]

Mr. René Arseneault: To what regulations do the words "subject to any regulations" refer? Do they refer to all regulations around the world, U.S. and Canadian regulations, or strictly Canadian regulations?

[English]

Ms. Kristen Ali (Counsel, Department of Justice): It would be Canadian regulation, so the reference to regulations would be Canadian.

[Translation]

Mr. René Arseneault: How can I be sure this really refers to Canadian regulations? Although Canadian law, Canadian acts, and federal acts are defined, the word "regulations" is not.

Would it not be simpler to state that the word "règlement" or its English equivalent means a Canadian regulation?

[English]

The Chair: I think that question is more appropriately addressed to our legislative clerk, just to address how that should be written in any bill.

[Translation]

Mr. René Arseneault: All right.

[English]

The Chair: No, this is your job.

[Translation]

Mr. René Arseneault: Pardon me.

Mr. Philippe Méla (Legislative Clerk): That is all right.

Generally, when we refer to acts or regulations in a Canadian bill, the reference is to Canadian regulations.

Mr. René Arseneault: I know that, but this involves work done by Americans on Canadian soil. The point is simply to avoid confusion. I advanced the same argument in reference to an act of Parliament, and people constantly responded by saying what you told me.

Would it not be simpler to state in the definitions that any reference to the word "règlement" or to the word "regulations" in English means one or more regulations adopted by the Parliament of Canada? Would that weaken clause 17?

•(1715)

Mr. Philippe Méla: In fact, I am not sure that adds anything. The Interpretation Act, for example, defines what an act is. The usage of the word "act" implies that it refers to a Canadian act. This, generally speaking, is how that is understood. I do not think the clarification you suggest would add anything.

Mr. René Arseneault: Paragraph 1(b) of Article VI of the treaty reads as follows:

[English]

1. The Parties agree that only the following persons will have access to the preclearance area:

b. persons who are authorized by the Host Party in the course of the normal certification and recertification process, in consultation with the Inspecting Party;

[Translation]

We agree that the words "*Inspecting Party*" refer to an American officer, do we not?

Mr. Philippe Méla: Yes, I imagine, but-

Mr. René Arseneault: Imagine, for example, if Canadian certifications were invalid under U.S. regulations or an act of this kind. I am simply asking the question.

Mr. Philippe Méla: It must be understood that this is a bilateral treaty, whereas this bill is Canadian and concerns Canadian acts and regulations. Consequently, there is no possible confusion as to what applies. These are always Canadian acts and regulations. If there is any confusion, it is elsewhere and not here because every bill of the Parliament of Canada concerns Canadian acts and regulations.

[English]

The Chair: I'm going to turn to Mr. Nesbitt to see if he has anything he wants to add to that discussion.

Mr. Scott Nesbitt (Senior Counsel, Department of Justice): The only part I would add is that where the bill does mean to refer to American laws, like U.S. laws or regulations, it does expressly refer to laws of the United States. For example, if you look at subclause 10(1), the reference there is to the laws of the United States.

Just to emphasize the point that's already been made, any general reference to an act is to a federal act of Parliament or regulation, and where it's meant to be an American law, it, in fact, refers expressly to laws of the United States.

[Translation]

Mr. René Arseneault: My concern stems from the fact that the English version states "*to any regulations*".

In my opinion, that paragraph could be interpreted as potentially including regulations other than those of Canada, but I may be mistaken.

I understand the legislative clerk's interpretation of the French phrase, but I find the words "*to any regulations*" somewhat troubling. Perhaps the word "*any*" should be deleted; I do not know. In any case, I am suggesting the idea.

[English]

The Chair: What I'm hearing from the Department of Justice officials, as well as our legislative clerk, is that the convention in Canadian law is to not specify that, because if we start to specify it once, we may need to specify it always. We're following a convention.

Am I correct on that?

[Translation]

Mr. Philippe Méla: I think so.

[English]

The Chair: Okay.

I have Monsieur Picard, Madam Damoff, and Mr. Spengemann.

Monsieur Picard.

[Translation]

Mr. Michel Picard: The proposed amendment concerns safety in marine transportation. If the amendment had been necessary, the same thing would have had to be done for all modes of transportation under the general agreement between Canada and the United States.

Ms. Wherrett noted that paragraphs 17(d) and (e) covered all modes of transportation. We have no reason to believe that storage terminals for railway transportation will operate in the same way as those for marine transportation in the very near future. There will be the same facilities for marine and rail transportation.

The fact that this is incomplete is offset by the fact that the bill concerns all modes of transportation.

[English]

The Chair: Ms. Damoff has waived.

Mr. Spengemann.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Mr. Chair, not to belabour the point, but I am tempted to side with Mr. Arseneault on one point, and it's the differential between paragraph 17(d) and paragraph 17(e). If you look at paragraph 17(d), in English, you see that the language is "or by regulation". That's understood, in Canadian statutory interpretations, to mean the body of Canadian regulation or its process.

The drafters then moved to a very different way of framing it in paragraph 17(e), which is "any regulations", the plural. I think that was the concern Mr. Arseneault had: that it's potentially U.S. regulations. In that sense, "any regulations" really could be construed as American regulations, and there might be a concern in terms of judicial efficiency to clarify that in the legislation to prevent litigation of that point or any kind of future judicial inefficiencies without having that clarity.

My question, I think, is to you as a professional in the Canadian public service. Why is there that discrepancy between "by regulation", which is well understood, and "any regulations", plural, which is a much less common term?

● (1720)

Mr. Philippe Méla: Where in paragraph 17(d) it says "by the Minister under section 45 or by regulation", it's something that's going to be made by the use of a regulation or more, but it's the use of the regulation. In paragraph 17(e), under "subject to any regulations", you have no choice other than to put an "s" there. It's "any" of the Canadian "regulations".

Mr. Sven Spengemann: Equally, we could have said "subject to regulation" and kept the same language as in paragraph 17(d). There's a divergence from what they've said in the previous paragraph that may lead one to suggest that they may import foreign regulations. If the U.S., by regulation, wanted to keep somebody out of that pre-clearance area in another country, they could do it through that....

The Chair: Mr. Di Iorio has a comment.

Mr. Nicola Di Iorio (Saint-Léonard—Saint-Michel, Lib.): Obviously, when it says "by regulation" it's because it's something that is specifically to this.... In the last one, they want to make sure that wherever it's covered in Canadian law, it's going to be accepted, and I agree. It has to be federal law, because Canada has a federal system of jurisdiction. Therefore, we don't want to include provincial legislation or provincial regulations.

The Chair: Okay. We've gone a little off track, because we really need to deal with the amendment, which is the addition of paragraph (f). I gave a little leeway because it does relate to whether (f) was redundant, given paragraphs 17(e) and (d), but I'd like to go back now to the amendment on the addition of 17(f). Then we'll come back to the whole thing, and if there are amendments, we'll deal with them then.

Is there any other discussion on NDP-1.1 regarding the addition of paragraph 17(f)?

Ms. Dianne L. Watts: Mr. Chair, my point is that under this section, in the pre-clearance area, when they have already gone through the security clearance, through CSIS and everything else, there is no point in giving that list, that derogatory information, to the United States, to Homeland Security, which can give it to the employer. That's the crux of the issue in the pre-clearance area, so this specific section—and it speaks to the regulations—really addresses this issue.

The Chair: Are there any other comments on the proposed addition of paragraph 17(f)?

I do need to keep going to a vote.

(Amendment negatived)

(Clauses 17 to 21 inclusive agreed to)

(On clause 22)

The Chair: On clause 22, we have an amendment.

I will remind the committee about how the order of precedence works. The first amendment received was amendment NDP-2. If amendment NDP-2 is adopted, then amendments PV-2, CPC-1, and LIB-6 cannot be moved as they amend the same lines. Also, if amendment NDP-2 is defeated, so is amendment PV-2 as they are identical.

On amendment NDP-2, Mr. Dubé.

• (1725)

[Translation]

Mr. Matthew Dubé: Thank you, Mr. Chair.

One of the most odious aspects of this bill, which we have been discussing for several weeks, is this capability or this expanded power to conduct strip searches. By deleting the lines in question, we want to remove any risk that travellers may have to undergo such searches, particularly by American officers, something we quite obviously consider unacceptable.

[English]

The Chair: You will see that amendment NDP-2 essentially deletes lines 27 through 37 on page 9.

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

The Chair: The amendment does not carry, and amendment PV-2 is considered defeated as well.

However, we can continue to amendment CPC-1. I will remind the committee that if amendment CPC-1 is adopted, amendment LIB-6 cannot be moved.

We will go to amendment CPC-1.

Mr. Clement.

Hon. Tony Clement: Thank you, Chair.

The idea around CPC-1 is to again amend the strip search provisions to provide or require that it be a Canadian border services officer who does that rather than, if none is available, it be available for the U.S. officer. I do not believe this offends the treaty, because what we're doing is requiring CBSA to be present rather than amending what a U.S. border officer is doing or not doing. I think it is consistent within the treaty. I think it would mean that we could be assured that Canadian laws are not only available but also are applied. That's the critical issue, I think, in these cases, and therefore something that I think is more amenable to the rights of Canadian individuals.

The Chair: Very good.

Monsieur Picard, and then Ms. Damoff.

[Translation]

Mr. Michel Picard: Thank you, Mr. Chair.

Security comes first, but there is also the fact that, if a traveller is required to undergo this kind of search and it clears up confusion and enables the traveller to take his or her trip, we will have done our duty and our job of ensuring security without denying access to individuals travelling abroad.

I think this is entirely appropriate. We Canadians and Americans share the same concerns regarding the security of our borders. The objective is for our two countries to cooperate and work together in the same frame of mind.

I therefore oppose the amendment.

• (1730)

[English]

The Chair: Ms. Damoff.

Ms. Pam Damoff: My comments from earlier would apply here.

I wonder if the officials could comment on whether this is consistent with the agreement or not.

The Chair: Ms. Wherrett.

Ms. Jill Wherrett: This amendment is inconsistent with the agreement. It's not consistent with paragraphs 12 and 13 of article VI of the agreement, which do allow for pre-clearance officers to conduct partial body searches, or strip searches, if the host party declines to search or advises that it is unable to conduct the search without undue delay.

Ms. Pam Damoff: In other words, we would need a new agreement if we were to adopt this.

Ms. Jill Wherrett: That's correct. It's not consistent with the agreement.

Ms. Pam Damoff: Thank you.

The Chair: Mr. Arnold and Mr. Clement.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

The Chair: Welcome, by the way. I forgot to welcome you at the start of the meeting.

Mr. Mel Arnold: Thank you. I'm filling in for a colleague who was called to a family emergency, unfortunately. He regrets not being able to be here.

The Chair: I will mention to the committee that Mr. Miller's mother is gravely ill today. That's why he had to unexpectedly leave.

Mr. Mel Arnold: Thank you.

I'm sorry I haven't been in on the entire discussions on this bill. My question is regarding the security and peace of mind for Canadians, or people travelling from Canada to the U.S. They have a trust in Canadian security systems, Canadian police forces, and so on. Would there be the same protection, personal rights protection, should there be allegations by individuals travelling from Canada of any improprieties by foreign agencies, U.S. agencies, if this weren't in place?

The Chair: Ms. Wherrett, I think you're probably the best one to answer that, although you may want to refer to one of your colleagues as well.

Ms. Jill Wherrett: We've discussed with the committee that as stated in the bill, Canadian laws do apply. The U.S. officers in their conduct are expected to follow Canadian law, including the charter. Individuals who are subject to a search have the right to be taken before a senior officer and have the charter rights that are available to them. So all of those provisions do apply.

As well, in terms of officer conduct, the normal provisions apply in terms of U.S. processes for complaints about officer conduct.

The Chair: Mr. Clement.

Hon. Tony Clement: We did have testimony that is contrary to what was just said. I think it's fair to say that Canadian laws can apply, but then the issue is, what is the remedy? The fact is that Canadian remedies cannot apply to U.S. officers. I think we should just stop beating around the bush here and be honest with ourselves and with the Canadian public. You can prattle on all you want about Canadian laws applying, the charter of rights applying, and how it's in the legislation that the charter applies, but there are no remedies. It's kind of hard to have a right without a remedy. I want to make that point clear.

Am I still in favour of the bill? Yes, because I think Canadians want pre-clearance, but let's not kid ourselves that you are going to apply a remedy against a U.S. official. It's not going to happen. It didn't happen in Iraq. It's not going to happen in Canada. I just want to make that point.

What I'm trying to do, though, is to at least require the CBSA to do its job, which I don't think offends.... I disagree with the official. It doesn't offend the legislation. The legislation contemplates if the CBSA official declines to do—

The Chair: The agreement.

Hon. Tony Clement: Sorry—the agreement. If a CBSA official declines to do her or his job or is unavailable to do her or his job, then it's a U.S. agent who does it, but all we should do is require that the Canadian border agent be there. Put it in the legislation. Make sure that we have funding to make sure the person is there or is spelled off by another agent. I think this is utterly consistent with the bill and should be approved by this committee.

End of rant.

Voices: Oh, oh!

•(1735)

The Chair: Are there questions or comments?

Seeing none, let's vote on CPC-1.

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

The Chair: That makes amendment LIB-6 eligible to be moved.

Monsieur Arseneault.

[*Translation*]

Mr. René Arseneault: I heard what my colleague Mr. Clement said. I have read the entire bill that we have before us, and I am well aware there is no possible recourse in the event Canadian law is violated. On the other hand, like you, I heard the witnesses tell us that there is no indication in the archives that strip searches were conducted last year. It is an exception; it does not happen often.

Furthermore, if a situation turned into a nightmare for any reason whatever, for travellers wishing to use the preclearance zone—we all agree that these are travellers wanting to go to the United States and we are still on Canadian soil—I wanted, with this amendment, to reiterate that the preclearance officer must know that, if no Canadian border services officer is available within a reasonable period of time, he or she will then be subject to clause 11. My amendment is therefore somewhat redundant, but it clearly states that the preclearance officer must comply with clause 11, which concerns compliance with Canadian law. The idea was to go a little further to

ensure the preclearance officer knows that. Having said that, I think the risk is extremely minor in view of the testimony we have heard.

[*English*]

The Chair: Monsieur Dubé.

Mr. Matthew Dubé: Chair, I'm opposing this amendment because we're still in a situation where the American is doing the strip search, potentially, and despite how rare it may be, I don't protect rights for the rarity of the breaches of them. Moreover, I would echo what Mr. Clement said earlier. Once again, going back to clause 11, we still find ourselves with the same problem with regard to the State Immunity Act and so forth, with an inability to have any proper recourse, or remedy, to perhaps use the more appropriate term, as Mr. Clement said.

I think this does nothing to resolve the issue, and I understand it doesn't jibe with the agreement, but quite frankly, I'm astonished that in Canada we would sign an agreement, even with one of our closest allies, that would allow a foreign agent to do strip searches, even in the most rare of instances, on a citizen of this country on this country's soil. It is something that completely baffles me.

I will be opposing this amendment because it certainly does nothing to remedy what is the critical issue in this clause.

[*Translation*]

The Chair: Are there any other questions or comments?

[*English*]

Mr. Nicola Di Iorio: It is redundant, but I will nevertheless support it.

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

The Chair: That takes us to the last amendment on clause 22, which is NDP-3.

Monsieur Dubé.

[*Translation*]

Mr. Matthew Dubé: Thank you, Mr. Chair.

We drafted this amendment following consultations with various groups that advocate protection for transgender persons, who might want to ensure that strip searches are conducted by an appropriate individual.

Despite our qualms over the very existence of certain aspects of this clause, we at least want the language used to be consistent with the fact that this is 2017 and to reflect the fact that we are at last honouring the rights of the transgender community, for example, in the spirit of bills such as C-16.

•(1740)

[*English*]

The Chair: Mr. Clement.

Hon. Tony Clement: I agree with my colleague.

The Chair: Are there other questions or comments?

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

Mr. Matthew Dubé: Chair, can we have a recorded vote on this clause?

The Chair: We will have a recorded vote.

Mr. Michel Picard: It's a vote on what?

The Chair: We're on amendment NDP-3.

Mr. Matthew Dubé: I thought it was on the clause itself.

The Chair: Sorry—we're on clause 22 now, as it stands.

Hon. Tony Clement: I want a recorded vote on the amendment.

A voice: *C'est voté.*

Ms. Dianne L. Watts: If somebody calls for a recorded vote, you have to have a recorded vote.

The Chair: Sorry. It was dealt with already, but we will have a recorded vote on clause 22.

(Clause 22 as amended agreed to [See *Minutes of Proceedings*])

(Clauses 23 and 24 agreed to)

(On clause 25)

The Chair: Ms. May has an amendment.

Ms. Elizabeth May: Thank you, Chair.

As you can imagine, it's difficult not to be able to participate in the debates on other amendments. I certainly would have liked to support marine workers, who are concerned about U.S. officials having negative comments on their work.

I'm now making an amendment specifically to clause 25. It would change subclause 25(2) as it starts on page 11 and goes over to page 12. This is within the context of a traveller having a right to see a senior officer before being subjected to a search. As it's currently drafted, it says:

Senior officer's agreement

(2) If the traveller is brought before a senior officer, the search is permitted only if that officer agrees that the preclearance officer or border services officer, as the case may be, is authorized under the applicable section to conduct the search.

My amendment would create another condition:

and that the search is necessary for the purpose of conducting preclearance.

Again, on the advice of the brief from the Canadian Bar Association, this is to create for the senior officer a discretion that the strip search doesn't have to and should not be conducted where the senior officer determines that there are insufficient circumstances to warrant an invasive act such as a strip search. It makes it clear that it's not just a question of whether the junior officers are authorized, but whether in fact a search is necessary for the purpose of conducting pre-clearance.

It stands as an intermediate position between my earlier amendment, which was defeated as identical to the NDP amendment, of eliminating strip searches, but creates another condition. It is a discretion for a senior officer.

Thank you.

• (1745)

The Chair: Monsieur Arseneault.

[*Translation*]

Mr. René Arseneault: I heard what our colleague Ms. May said.

However, I think it is redundant because that is precisely what subclause 25(2) states. That is essentially it: in French with the words "au titre de la disposition applicable" and in English, "may be, is authorized under the applicable section to conduct the search". Thus we come back to "applicable section" in the bill, which I think is redundant.

So I will be voting against the motion. The same thing is being said twice.

Ms. Elizabeth May: It is not exactly the same thing. That is why I would like us to add the words "the search is necessary for the purpose of conducting preclearance."

[*English*]

It's actually different and additional, because it gives the senior officer discretion that isn't there now. If the junior officers are authorized, then the senior officer has nothing to say about it. Again, this is the view of the Canadian Bar Association as well.

The Chair: Monsieur Picard.

Mr. Michel Picard: I would invite my colleague to look at the first line of clause 21, which states:

A preclearance officer may, for the purpose of conducting preclearance,

This is the reason they do a strip search, so this is a redundancy.

Ms. Elizabeth May: No, it's not. Sorry.

If I may, Mr. Chair, let me just briefly say.... I know I'm not allowed to say too much in defending my amendments, but—

Mr. Michel Picard: Please do.

Ms. Elizabeth May: —the difference between being redundant and having purpose and meaning that improves the act is this. The existing act says that when you're doing a pre-clearance, you can decide to do a strip search. Nowhere in the current clause does it say that a strip search can be conducted only to the extent that it is necessary for purposes of conducting a pre-clearance. There is no requirement of necessity. Under the law, that's a different concept from authorization.

The Chair: Monsieur Arseneault.

[*Translation*]

Mr. René Arseneault: I am trying to understand the subtle distinction my colleague is raising.

If we go back to subclause 22(1) or subclause 22(4), we are still talking about reasonable grounds.

If I correctly understand the part concerning the senior officer's agreement, the senior officer must ensure that "the preclearance officer or border services officer, as the case may be, is authorized under the applicable section to conduct the search."

The senior officer will surely ask the officer or junior officer why he or she wants to search a particular person. The latter must then justify his or her decision under subclause 22(1) or 22(4). In my view, the amendment Ms. May proposes is already in the bill.

Those are my comments. I may be mistaken.

Ms. Elizabeth May: I would just like to add this.

Under the current legislation—you are right—the Border Services Agency may conduct the search if it deems it necessary. However, the bill makes no provision concerning the other officer, the superior officer, the senior officer. It is unnecessary for the senior officer to consider whether the search is really necessary or not. That is not within his or her discretion.

[*English*]

It's a question of whether the senior officer has the discretion to say, for instance, "I've looked at the circumstance. The traveller has come to me." There must be some logic to the law that says the traveller can come to the senior officer, and the senior officer should be able to say, "I don't think this is necessary. This is an invasive operation. Yes, you may be authorized, junior officer, but I don't think this strip search is necessary in order to conduct a pre-clearance."

It doesn't continue to that stage.

The Chair: Are there any other questions or comments on Green Party amendment PV-3?

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

(Clause 25 agreed to)

(On clause 26)

The Chair: There is an amendment from the NDP.

On amendment NDP-4, Mr. Dubé.

• (1750)

Mr. Matthew Dubé: Chair, once again, this is just bringing the language in line with regard to the respect given to the rights of transgendered Canadians, and making sure that the appropriate wording is there. These words, especially in the law, do matter. This brings us in line with the respect that we purport to have in this day and age for our fellow Canadians who are transgendered.

The Chair: Ms. Damoff.

Ms. Pam Damoff: I will ask the officials about this one.

Are there other acts that include the word "sex" as opposed to "gender" that would mean that we need to use "sex" in this as opposed to "gender?" I also understand that there was a Supreme Court decision with regard to the gender or the sex of the person conducting the search.

The Chair: Ms. Ali.

Ms. Kristen Ali: Thank you.

Yes, for this provision, the language of "sex" is consistent with similar authorities found in the Customs Act to conduct searches. That is in section 98 of the Customs Act. In both cases, the language of "sex" must be interpreted in a purposive and contextual manner that both recognizes and respects gender identity and expression.

Ms. Pam Damoff: That is in the Customs Act?

Ms. Kristen Ali: Yes. The language with regard to a search by an officer "of the same sex" is in the Customs Act, at section 98.

The Chair: Mr. Clement.

Hon. Tony Clement: I support the amendment. I think the Conservatives do. The language is more modern and inclusive.

Certainly if and when Bill C-15 gets passed by Parliament and is brought into law, this kind of review will be going on automatically with all legislation. To get ahead of the curve, I think it would be appropriate.

The Chair: Monsieur Dubé.

Mr. Matthew Dubé: Chair, let me just say that these amendments in particular have a certain resonance, given the provisions that would allow American agents—understanding, again, that these cases we would hope would be rare—to do the strip searches. I certainly have confidence in Canadian officers, but I am not quite sure that the comportment of American officers is up to the standard we would expect in terms of the treatment that transgendered Canadians should get. I think that makes this all the more important.

I understand the jurisprudence, but I would echo Mr. Clement in saying that we might as well start now in using more modern language, as was well stated.

Hon. Tony Clement: I'd like a recorded vote.

The Chair: Ms. Wherrett, this obviously would not offend the agreement, or would it?

Ms. Jill Wherrett: No, I don't believe it would be contrary to the agreement. Again, the choice of language was to be consistent with the language in the Customs Act, where the term "sex" is used, but interpreted in a manner that is intended to recognize and respect gender identity. We do recognize that the law is evolving in this area and language usage is evolving in this area, but the decision from a drafting perspective was to be consistent with existing language.

The Chair: Then I will ask someone from Justice whether this has to be consistent with other legislation or are we in a time when it could be inconsistent.

That might be Mr. Nesbitt.

Mr. Scott Nesbitt: I think it's Ms. Ali.

The Chair: I think you passed the buck.

Ms. Ali.

Ms. Kristen Ali: He did pass the buck.

We see that the term "gender" has not been used frequently in the legislative corpus to date and particularly not in the analogous context. Again, that's why the language of "sex" from the Customs Act was relied on here.

The Chair: Ms. Damoff.

Ms. Pam Damoff: Despite the fact that it hasn't been used, as Mr. Clement very rightly pointed out, we've now passed a bill, which is now in the Senate, that is going to require us to use it a lot more.

Is there any reason we can't change that, other than it's consistent with the Customs Act? I'll be honest with you, I thought it had to do with a decision that was made by the Supreme Court 20 years ago regarding what sex of officer could do the search. That's something separate.

So the only thing is being consistent with an act that's likely going to have to be changed under Bill C-16?

• (1755)

Ms. Kristen Ali: In terms of the Customs Act authority—and at some point I'll turn to CBSA to describe their transgender search practices—is the point that it does have to be interpreted in a manner consistent with respect for gender identity and expression.

In terms of same sex, perhaps I could turn to CBSA and they could describe their practices.

Mr. Sébastien Aubertin-Giguère (Director General, Traveller Program Directorate, Canada Border Services Agency): Should a situation arise in which a strip search is required on a transgender or intersex person, the CBSA will provide the individual with the option to choose the gender of the border services officer who would conduct the personal search. The following options are available to the traveller: male officer only, female officer only, or a two-stage strip search for a transgender or intersex person.

The Chair: If any caucus wanted to suspend for a moment to discuss this, I would entertain that. I think we'll suspend for just a couple of moments while the caucuses work.

• (1755)

_____ (Pause) _____

• (1805)

The Chair: I'd really like to get going.

Ms. Damoff, do you have a comment?

Ms. Pam Damoff: I have a question and a comment because we've had a lot of talk about when Bill C-16 comes into effect and legislation needing to be changed. Obviously that's new legislation. I guess I have a two-part question. At this point, is gender defined in law? The second question I have—and I'll go back and give you another opportunity to comment on this because I did have a conversation offline on it—is whether “sex” is defined, and whether the courts have spoken to what is defined by “sex”.

The Chair: Ms. Ali.

Ms. Kristen Ali: Thank you.

With respect to “gender” being defined in law to date, I would just repeat my earlier comment that there are not a lot of examples of the use of “gender” in the statute books to date.

Ms. Pam Damoff: You said “a lot”. Is it in use?

Ms. Kristen Ali: There are not many. There are a few, and to some extent they're used interchangeably, “sex” and “gender”. One example may be the Corrections and Conditional Release Act that speaks both to “gender” and “sex”, and they tend to be used interchangeably.

The fact that there aren't a lot of examples of “gender” on the statute book means that there is some uncertainty in terms of how that will be interpreted and applied. Here, particularly in the analogous context, that's closely akin to the Customs Act where we do rely on “sex” as the language, but again it's interpreted in a purposive manner.

Ms. Pam Damoff: Is “sex” defined by the courts? Is there a definition of “sex”? If you have someone who is transgender coming to the border, how are you deciding?

Ms. Kristen Ali: Exactly. That's in terms of CBSA's operational practices. “Sex”, in terms of the Customs Act, is interpreted and

applied purposively and contextually, not simply in a biological or limited manner. For CBSA, with respect to transgender searches, they provide a choice of officers in terms of the sex or gender of the officers who would be conducting the search of the person, or they would provide a split search option where officers of different sexes would search the person dependently.

Please correct me, CBSA, if I've misstated anything.

That's an excellent example of where “sex” is used in the legislation and the authority to conduct the search, but in its practice it's applied in a manner that respects gender identity and expression. The intent is the same here, really, with the reference.

Ms. Pam Damoff: What does it say in the agreement? What term is used in the agreement that we have?

Ms. Kristen Ali: In the agreement? “Sex” is used as the term.

Ms. Pam Damoff: I'm fully supportive and cognizant of the issues and concerns that transgender people have when they cross the border, but by the same token, I'm a little worried about making changes here without the opportunity to get a definition of “gender” put into the.... I think we're stepping a little outside of what we want to be doing here in terms of the legislation.

Also, if sex is used in the agreement, the last thing I want would be to give a reason to go back and have to get the agreement renegotiated over changing a term that we're going to have to change when Bill C-16 is passed anyway. There'll be a complete review of all of this legislation so it will be changed when C-16 is passed. Is that correct?

• (1810)

Ms. Kristen Ali: I'm sorry, I couldn't speak to that.

Ms. Pam Damoff: Is somebody from Justice here?

The Chair: Using the prerogative of the chair, I'll ask a question with respect to article VI, paragraph 15 of the agreement:

The actions of officers under paragraphs 12 and 13 with respect to the search of a transgender person or a transsexual shall be performed in accordance with the policies of the Party performing the search.

Do we have legislation that accurately interprets that part of the agreement we have made, and are we being consistent with it? Obviously, the agreement was done in such a way that people who are transgender or transsexual would be respected by whichever party. Can we declare that our legislation is cognizant of paragraph 12 of article VI, and if so, why isn't it in the legislation as such?

Ms. Jill Wherrett: As CBSA has stated previously, they've outlined their policy in terms of searches, so this is consistent with that. That's consistent with the agreement. The U.S. approach is quite similar, so it is consistent. The practice we are following is consistent with what's in the agreement.

The Chair: In your opinion, then, this legislation enables that practice, which, as we think this committee wants, is consistent with the legislation the way it is worded.

Ms. Jill Wherrett: Yes.

The Chair: Okay.

Mr. Spengemann, go ahead.

Mr. Sven Spengemann: Mr. Chair, I'll just briefly substantiate some of the questions and comments by my colleague, Ms. Damoff.

Maybe the simplest way to do it is to put the following question to you, Ms. Ali. Which term, "sex" or "gender", would give a transgendered Canadian better legal protection at this time in history, under current jurisprudence? It's the jurisprudence that's important, not so much what the bill says, but how it is interpreted.

Ms. Kristen Ali: I can speak to some of the jurisprudence that exists. As I am aware, it does exist at the tribunal level with respect to searches. Again, I can speak to the practice with CBSA, where the language is "sex" in the Customs Act, but that's interpreted and applied in a manner to respect and recognize the rights and choices of transgendered individuals when a search is conducted.

Mr. Sven Spengemann: Am I going beyond the purview of what you are able to comment on when I ask whether that same approach is taken under other statutory instruments?

Ms. Kristen Ali: A bit, unfortunately.... I couldn't speak beyond the CBSA context here.

The Chair: Is the committee ready to proceed on the amendment?

Hon. Tony Clement: I request a recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

(Clause 26 agreed to)

The Chair: We now have LIB-7, which is about inserting what would be a new clause, clause 26.1.

Monsieur Picard, go ahead.

•(1815)

[*Translation*]

Mr. Michel Picard: Mr. Chair, several witnesses expressed a fear of being unable to react to an inappropriate situation, an improper or simply unlawful action, and of being unable at least to report that situation.

Consequently, I propose that we add a clause to enable people to report to Canadian authorities any practice they deem inappropriate. Since the agreement provides for the two parties to meet to assess their border performance, this kind of information should be brought to our government's attention so that the necessary action can be taken and the necessary corrective measures introduced. So this is a measure-I would not call it a complaint *hotline*-that would enable people to make their voices heard regarding situations they consider inappropriate.

[*English*]

The Chair: Monsieur Di Iorio.

[*Translation*]

Mr. Nicola Di Iorio: Travellers are already able to complain, as they see fit, about the way they have been treated. In this instance, however, that right is restricted by an amendment requiring that travellers complain in a particular manner. I do not understand how this increases their rights in any way. The English version reads, "*may, in a prescribed manner*".

Why would we require a traveller to file a complaint in a specific manner? Here we are telling travellers who wish to complain to their government about the way they have been treated that they may do so in only one way.

[*English*]

The Chair: Mr. Clement.

We'll get back to an answer, and we'll ask the officials.

Hon. Tony Clement: I have a different.... I'm trying to find whether in the legislation "counsel" is defined. It's not in the definition section. I know that it is in the agreement, but I would note that "counsel" is not defined in the legislation.

The Chair: Okay.

We have two questions to deal with.

Monsieur Picard, you're the mover of the amendment, so the first would be the limitation on this being "in a prescribed manner," *en français*, "*selon les modalités réglementaires*", and also whether or not we should have a definition of "counsel", which is referred to in the agreement, but is not named in the legislation.

[*Translation*]

Mr. Michel Picard: I would simply point out that customs does not have an oversight agency. This option is being offered to enable people to file a report.

[*English*]

The Chair: Monsieur Di Iorio.

[*Translation*]

Mr. Nicola Di Iorio: That does not answer my question. I want to know why travellers are being subjected to this way of doing things, that is "*in a prescribed manner*".

Travellers may not file a complaint if they do not do so in the manner required by the government.

[*English*]

The Chair: Monsieur Picard.

[*Translation*]

Mr. Michel Picard: The bill is not designed to describe the way complaints and reports are managed from an administrative standpoint. It simply provides for the establishment of a system-whether it be a form, a telephone call or something else-enabling people to make their voices heard. People will not telephone senior officers in the departments. Instead a system will be set up to enable them to state their complaints and views. In that way, corrective action can be taken when the two parties meet periodically.

For the moment, this offsets the lack of customs oversight. As for the procedure, that will be governed by regulations that remain to be determined. At least we are opening the door to the possibility of establishing this procedure to enable people to file a report. In addition, as the example Mr. Clement cited earlier showed, a recourse will then be possible.

[English]

The Chair: I have Ms. Damoff and Monsieur Arseneault.

I'd also remind members that subamendments are appropriate. If anybody wanted to amend an amendment, that is also appropriate.

Ms. Damoff.

Ms. Pam Damoff: I just wondered if we could suspend for a couple of minutes.

The Chair: Yes, we may suspend for a couple of minutes and have a discussion about this.

While you're doing this, I may ask the officials to think about whether "in a prescribed manner" adds to the clarity of this clause. Do you see that as helpful, or unhelpful? While they're caucusing, you may want to be prepared to think about that.

Thank you.

• (1820) _____ (Pause) _____

• (1825)

The Chair: We're going to resume.

I have Ms. Damoff and Monsieur Arseneault on the speakers list.

Mr. Spengemann, would you like to say something?

Mr. Sven Spengemann: Mr. Chair, I would like to move a subamendment to the proposed Liberal amendment LIB-7, to read as follows:

26.1 A traveller may, in a prescribed manner, inform the Canadian senior officials of the Preclearance Consultative Group, established under the Agreement of any situation referred to in sections 22, 23, and 24, subsection 31(2) and section 32 of this Act.

The operative change is replacement of the word "Council" with "Preclearance Consultative Group".

The Chair: Mr. Clement had to leave, but he'll be returning. I think that probably would satisfy what he was worrying about, but I can't speak for him.

Could you give the three words again?

Mr. Sven Spengemann: Absolutely. It's Preclearance with a capital P, Consultative with a capital C, and Group with a capital G.

The Chair: Is there any discussion about the subamendment?

(Subamendment agreed to)

The Chair: Now we go to the amendment.

Do we have a second subamendment?

Mr. Nicola Di Iorio: Yes.

It's to add at the beginning of proposed clause 26.1, the following words: "Regardless of any applicable recourse".

The Chair: So that would be, "Regardless of any applicable recourse a traveller may".

Is there any discussion about that subamendment?

(Subamendment agreed to)

The Chair: Now we go to the full amendment on clause 26.1.

Mr. Michel Picard: As amended.

The Chair: As amended twice.

Seeing no discussion, I will call the question.

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

The Chair: Because it carried, I don't need to vote on the full clause.

(Clauses 27 and 28 agreed to)

(On clause 29)

The Chair: On clause 29, we have NDP-5.

Monsieur Dubé.

• (1830)

Mr. Matthew Dubé: Chair, obviously the ability of a traveller to leave the pre-clearance zone in the way that they can under the current framework is something that's been part of this debate. We recognize what the agreement says, and whether or not the amendment will receive support from members of the government caucus strictly on that basis, nonetheless it's worth presenting.

Again, one of the most egregious elements is this inability for someone who might feel that there's an abusive line of questioning, or any such legitimate reason, to choose to leave, and the obligations that are placed on them.

This is the first of a few amendments that will seek to alleviate that burden on travellers who have legitimate reasons for leaving.

The Chair: Are there questions or comments on amendment NDP-5?

Monsieur Picard.

Mr. Michel Picard: It's a small one. It's contrary to article VI, paragraph 23 of the agreement which is there for a number of security reasons.

The Chair: We are voting on amendment NDP-5.

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

(Clause 29 agreed to)

(On clause 30)

The Chair: We have a Green Party amendment, PV-4.

Ms. Elizabeth May: Mr. Chair, this amendment is to change clause 30, on page 13. As it reads currently, it says:

A traveller who withdraws from preclearance must

(a) answer truthfully any question asked by a preclearance officer under paragraph 31(2)(b) for the purpose of identifying the traveller or of determining their reason for withdrawing; and

The amendment I am putting forward would remove the language “or of determining their reason for withdrawing”. It would merely go to “and”, to take us to the next paragraph.

The reason for this was put forward most clearly of all witnesses by the British Columbia Civil Liberties Association:

We are aware of no sufficiently compelling justification to eliminate the right to withdraw in situations where there is no reasonable suspicion of an unlawful purpose on the part of the traveller.

In other words, no traveller should be required to provide a pre-clearance officer with their reason for withdrawing. Any Canadian has the right to turn around and leave a pre-clearance area just because they feel like it. They do not need to provide a reason.

I agree with the British Columbia Civil Liberties Association. I can see no reason in law why someone should be compelled to provide a U.S. official with a reason, when they simply just changed their mind and are going back home.

The Chair: Mr. Picard.

[*Translation*]

Mr. Michel Picard: Once again, these are security issues. Based on the information provided, if the reasons why the person is withdrawing are not dubious, the process will be quick and the individual will not suffer negative consequences. Whatever the case may be, security remains a priority.

[*English*]

The Chair: Ms. Damoff.

Ms. Pam Damoff: I just want to go back to the fact that our hands are tied on a number of these things because of an agreement that was negotiated.

This isn't a normal bill we've received from the government that isn't tied to something else, and so, while I have the utmost respect for the member opposite and truly wish we weren't tied to an agreement, we are. The legislation has been drafted as such, and we need to be mindful. That is certainly the reason I won't be supporting the amendment. We are dealing with an agreement that was already signed and we are unable to change it, because of what's in the agreement, without going back and trying to get a new one. That's it.

• (1835)

The Chair: Mr. Spengemann.

Mr. Sven Spengemann: Mr. Chair, we did receive testimony to the effect that—I don't remember exactly what the language was—travellers should, prior to arriving at a pre-clearance facility, have some mindset on whether or not they want to travel and what the conditions are, and it is incumbent upon our system to communicate what is required upon pre-clearance.

The other thing is that the act doesn't prescribe any qualitative definitions or conditions on those reasons. The reason could simply be, “I don't wish to subject myself to this process. I've changed my mind.” That would be enough of a reason to then be able to leave the pre-clearance area.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: We'll get into that in the other clauses. I don't want to take us away from the debate on Ms. May's

amendment, but the whole issue with that is a “reasonable suspicion” that comes from the reasons for wanting to leave.

We could go back and forth on this, but obviously, given that the threshold is far different for an American agent, the ability—the need rather—of a Canadian not to have to give their reasons is important, because then you start getting into “reasonable suspicion” and “detention” and all those other issues that come as we go through this section of the bill.

The Chair: Seeing no other hands, shall amendment PV-4 carry?

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

The Chair: Shall clause 30 carry?

Mr. Matthew Dubé: Chair, could we have a recorded vote on clause 30?

(Clause 30 agreed to: yeas 7; nays 1)

(On clause 31)

The Chair: Amendment NDP-6 is the first amendment on clause 31. I will just remind the committee that if NDP-6 is adopted, then Green Party amendment PV-5 cannot be moved as they amend the same lines.

We move to NDP-6.

Monsieur Dubé.

[*Translation*]

Mr. Matthew Dubé: Mr. Chair, once again we are talking about the powers that will be granted to the Americans with respect to a person leaving the pre-clearance area. We are aware that security issues are involved. Consequently, we would like the amendment to enable the officer to intervene where the person presents an immediate, clear, specific, and explicit threat.

[*English*]

The Chair: Shall amendment NDP-6 carry?

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

The Chair: We have amendment PV-5.

Mr. Matthew Dubé: I would ask for the indulgence of colleagues, and I won't do this on every one, but I would also like a recorded vote on clause 31.

The Chair: Okay, when we get there.

We have amendment PV-5. Ms. May.

Ms. Elizabeth May: Mr. Chair, of course, the intent here was to remove the various requirements that travellers justify their decision for changing their mind and turning around and leaving.

Green Party amendment PV-5 would delete those sections that would not make sense once we're withdrawing from pre-clearance. Again, we want to withdraw from pre-clearance and remove that requirement that's found on page 14 by ending that paragraph after “identifying them”.

I think I know which way this is going to go but again, I do think we can negotiate agreements and ask for changes once something goes to Parliament. I really hate to see us stuck with an agreement like this that I think violates Canadians' rights when they're going into a pre-clearance area.

I'll leave it at that, Mr. Chair.

•(1840)

The Chair: Monsieur Picard.

Mr. Michel Picard: For the record, and with all due respect, the whole bill is unctuous on the charter rights for all Canadians.

Thank you.

Ms. Elizabeth May: Sorry.

(Amendment PV-5 negated [See *Minutes of Proceedings*])

(Clause 31 agreed to: yeas 7; nays 1)

(On clause 32)

The Chair: There are a number of amendments for clause 32. We'll begin first with NDP-7.

Monsieur Dubé.

Mr. Matthew Dubé: Similar to a previous amendment that I moved, once again we're looking at recognizing some of the security concerns that might exist with someone leaving, but rather than leaving these to what we feel are vague notions of suspicion...really leave it explicitly related to travel when it comes to any powers that the American pre-clearance officers can use on a Canadian who chooses to leave the pre-clearance zone.

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

The Chair: We now move to amendment NDP-8. I'll just note that if NDP-8 is adopted, amendment PV-6 would not be able to be moved.

Monsieur Dubé, on NDP-8.

[*Translation*]

Mr. Matthew Dubé: Thank you, Mr. Chair.

Our amendment contains the same terms and conditions respecting strip searches as those that would apply to persons leaving the preclearance area. The purpose of our amendment is to rectify a situation that we find unacceptable, in which an American officer would conduct a strip search of a Canadian citizen on Canadian soil.

[*English*]

The Chair: All those in favour of NDP-7?

Mr. Matthew Dubé: It's NDP-8.

The Chair: I'm sorry, amendment NDP-8.

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

The Chair: Amendment PV-6, which is a smaller part of that, is now able to be moved.

Ms. May.

Ms. Elizabeth May: Mr. Chair, again, this is consistent with amendments that I put forward that have been defeated, but it's to ensure, in lines 14 and 16 on page 15, the deletion of the sections relating to strip searches, had we been able to previously delete that in subclause 22(4). We have not, so I should withdraw this amendment because it no longer makes sense in the context of the bill.

The Chair: Okay, it is withdrawn.

We're now on amendment NDP-9, which proposes a new subclause following subclause 32(3).

Mr. Matthew Dubé: Chair, this is to bring it in line with the way pre-clearance currently works, that someone's refusal to answer a question is not reasonable grounds for the different powers being used for a search, and so forth. We've seen numerous occasions, whether it's with regard to people's religious beliefs or their sexual orientation and other situations, where there might be very legitimate reasons for refusing to answer a question, and that, in and of itself, we believe is not sufficient reason for an American agent to be able to exercise certain powers on a Canadian citizen on Canadian soil.

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

•(1845)

The Chair: Shall clause 32 carry?

Mr. Matthew Dubé: Could I get a recorded vote on this too, please. Thank you.

(Clause 32 agreed to [See *Minutes of Proceedings*])

(On clause 33)

The Chair: Moving to clause 33, we have amendment NDP-10.

Mr. Matthew Dubé: Chair, may I?

The Chair: Yes, sorry.

Mr. Matthew Dubé: Thank you.

I mentioned this to the minister, and I felt there was some openness. We'll see. Here we seek to remove the vague concept of *autorité légitime*, to use the French word, or "otherwise authorized by law". The particular example that comes to mind with regard to this part of the legislation is—and given this person's unpredictability, who knows—President Trump's floating out notions of mandatory cellphone searches for all travellers going to the U.S., regardless of their citizenship or where they're coming from. That could obviously affect Canadians as well, in a worst-case scenario. We question whether a presidential executive order could be considered as "otherwise authorized by law", or *autorité légitime*, if we're looking at the French.

By removing that, we feel it makes it explicit that we're talking about specifically Canada and the U.S., and not these vaguer notions of executive orders and other things of that nature, particularly given the unpredictable political climate, and dare I say, legal climate, that exists south of the border.

The Chair: Is there any further discussion?

Monsieur Arseneault.

[Translation]

Mr. René Arseneault: Perhaps I could put the question to the persons responsible. Like my colleague, I wonder about the purpose of adding the words "or as otherwise authorized by law" or "s'il existe une autorité légitime."

[English]

The Chair: Ms. Wherrett.

Ms. Jill Wherrett: The wording in the legislation is consistent with what was negotiated and agreed to in the Land, Rail, Marine and Air Transport Preclearance Agreement, so it is consistent with the language in line with article VI, paragraph 23 of the agreement.

Mr. René Arseneault: Is it paragraph 23?

Can you guide me? I'm there. Where exactly does it refer to "otherwise authorized by law"? Should I see it in paragraph 23?

Ms. Jill Wherrett: It's in paragraph 23(c).

• (1850)

Mr. René Arseneault: Okay. I see it. Would it be possible to give me a practical example? For security purposes between the United States and Canada, I can understand, but in which context is "otherwise authorized by law"?

Ms. Jill Wherrett: As outlined in the agreement and the legislation, the focus of this provision is border integrity and border security purposes, but there is that provision that allows it to be used for limited other purposes that are currently defined by law. Those may include some information sharing in relation to national security purposes. That would be the main example.

Mr. René Arseneault: You mean national security for Canada?

Ms. Jill Wherrett: Yes, it's information shared in terms of information that is collected by the U.S., so it would be national security broadly.

Mr. René Arseneault: Okay.

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

(Clause 33 agreed to)

The Chair: Mr. Clement, you'll be pleased that they redefined "Council" in your absence.

Hon. Tony Clement: Well, glory be, Mr. Chair.

The Chair: You were highly effective, even in your absence.

Hon. Tony Clement: Usually I'm more effective in my absence.

The Chair: No comment.

(On clause 34)

The Chair: On clause 34, there are two amendments from the Green Party.

Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

Starting with what you find at the very end of the seizure and forfeiture section, we would be amending lines 26 and 27. Right now it reads, under the concept of return or disposal of goods, "Subject to any regulations, a preclearance officer may...return any goods that

they have seized or dispose of any goods that they have seized or accepted."

My amendment also suggests that once goods have been seized, accepted, or disposed of, at that point in pre-clearance the officer "allow the traveller to enter the United States if there is no reason to further detain him or her."

Somebody might wonder, if you've seized goods, why you would let someone in. There are all sorts of reasons in a pre-clearance area that goods might be seized and destroyed that suggest no criminality or other offence. No law has been contravened by the person trying to cross into the United States, but we haven't made that clear.

I offer, as an example, somebody who's brought along some fruit from home and doesn't realize that the United States agricultural rules will not allow you to bring in that particular product. It's taken out of your luggage and it's destroyed, but it's not clear in this section as drafted that you can, with no further reason for detaining someone, take their goods and dispose of them, and then say, "Welcome to the United States. Continue on your way now that we have taken away the goods that we don't want entering the United States."

That's the purpose of my amendment. I don't think I need to read it into the record. It's before you as Parti vert-7.

The Chair: Mr. Spengemann.

Mr. Sven Spengemann: Mr. Chair, I think it's the last line of that proposed amendment that's the important one. Depending on how you look at it, it either describes the U.S. pre-clearance process or it tries to supplant it. If it's the latter, we're not legislatively mandated to make a pre-clearance decision for the U.S. If it's simply descriptive of the U.S. process, "if there is no further reason to detain him or her", that captures the entire process. I would think it's duplicative and should be left in U.S. hands.

• (1855)

The Chair: Ms. Damoff.

Ms. Pam Damoff: That mostly covered my point except that it should be left in U.S. hands. It has to be left in U.S. hands. They're making the decision on who can enter and who cannot. Is that not correct?

Ms. Jill Wherrett: That is correct.

Clause 34 speaks specifically to the seizure and forfeiture of goods, not the admissibility or detention of a traveller, so that's correct. These are two separate issues. The admissibility decisions remain a final decision by the U.S. in terms of who is admissible to their country.

The Chair: Are there any other comments or questions on PV-7?

Ms. Elizabeth May: I'd like to add that these recommendations came from the Canadian Bar Association, which can be presumed a collectivity of practising lawyers with the ability to do statutory interpretation and have regard for the existing state of laws between the two nations. It's a clarifying amendment that does no harm.

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

The Chair: We are on PV-8, also on clause 34. Is it of a similar vein?

Ms. Elizabeth May: It's a bit different, Mr. Chair. As a matter of fact, it's entirely different.

We're still in the clause on seizure and forfeiture, but we're dropping out of the issue of goods that are seized and forfeited.

Again, the Canadian Bar Association recommended—and we certainly had this issue already arise—that, if there is a decision by pre-clearance officers to confiscate or cancel a NEXUS card in a pre-clearance area, it should be reviewable.

The purpose of the amendment is that “The Canadian Border Services Agency may review any decision by a preclearance officer to seize or cancel a traveller's membership card in a program for pre-approved, low-risk travellers...”. I don't name it in here because other programs may develop that are along similar lines.

We have seen challenges by the Trump administration to NEXUS cards carried by travellers. Given that this piece of legislation, Bill C-23, is going to largely govern what happens when travellers from Canada try to enter the U.S., we want to make sure that there is a reviewable decision for any decision made by a U.S. pre-clearance officer.

The Chair: Mr. Picard.

Mr. Michel Picard: Thank you.

We understand that in the case of a NEXUS card an individual has to go through the two screening processes, of Canada and the U.S., and the U.S. has all the liberty and privilege to question the validity of the card or if they want to revise it.

The second comment is I doubt that the Canadian government will cross the line saying to our friends down south how they should do their work. I would not propose any review of our authority on their way of administering their own laws and regulations.

The Chair: Are there any other questions or comments?

Mr. Dubé.

[*Translation*]

Mr. Matthew Dubé: Thank you, Mr. Chair.

I understand why the Americans are entitled to make their own decisions under this program. Without questioning those decisions, if the preclearance is done on Canadian soil, I think the Canada Border Services Agency should at least have the power to review the situation. I find that entirely appropriate in light of certain stories that have come to light, particularly in the news. If we see that an irregularity has been committed at a particular place—for example, if cards are being seized more frequently there than elsewhere—that could be included in a review of the preclearance system.

We might ask that question if, for example, we saw that cards were constantly being cancelled at an airport in particular. That would call for some thinking to determine whether profiling was taking place there or if there were other problems.

Without questioning the Americans' right to make those decisions, I nevertheless think it is important to have at least a power of review.

Consequently, I will support Ms. May's amendment.

[*English*]

The Chair: Mr. Picard.

[*Translation*]

Mr. Michel Picard: Is it not true that the two parties will meet periodically to review certain practices? If that were the case, I would be happy to have moved amendment LIB-7, which provides for a recourse.

Do the two parties to the agreement in fact meet to discuss current practices?

• (1900)

Mr. Sébastien Aubertin-Giguère: Are you talking about the agreement or about NEXUS program management?

[*English*]

Ms. Jill Wherrett: Yes, that's right, in terms of the agreement, the parties will meet regularly. The NEXUS program is something that goes, as you know, beyond the agreement, but there are regular conversations about that program as well.

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

(Clause 34 agreed to)

The Chair: We have a number of clauses, clauses 35 through 45, for which there are no amendments and I was going to seek—

Mr. Dubé.

Mr. Matthew Dubé: I want to pre-empt what you're going to ask. I would be okay with that. The only one I would ask for a recorded vote on would be clause 39, given that clause 39 is where we deal with the State Immunity Act, which, as the B.C. Civil Liberties Association pointed out, is part of the fundamental problem with how grievances with regard to charter violations and other violations of Canadian law would be dealt with.

The Chair: Then I'm going to seek unanimous consent first to deal with clauses 35, 36, 37, and 38 together with one vote.

Some hon. members: Agreed.

(Clauses 35 to 38 inclusive agreed to)

(On clause 39)

The Chair: Moving to clause 39, Mr. Dubé has requested a recorded vote. Is there anything else you would like to say about that?

Mr. Matthew Dubé: No, just to say thank you.

The Chair: Okay.

(Clause 39 agreed to [See *Minutes of Proceedings*])

The Chair: Could I get unanimous consent to consider clauses 40 through 45 inclusive in one vote?

Some hon. members: Agreed.

(Clauses 40 to 45 inclusive agreed to)

(On clause 46)

The Chair: Moving to the definition section, clause 46, we have amendment LIB-8. No vote is required. It's consequential with us having already passed amendment LIB-4. Is there discussion on clause 46 as amended?

(Clause 46 as amended agreed to)

(Clause 47 agreed to)

(On clause 48)

The Chair: Moving to clause 48 and its amendments, we have Ms. May, with PV-9. Then we'll consider PV-10.

Ms. Elizabeth May: Thank you, Mr. Chair.

This one goes directly to a very short section, subclause 48(2). We're now dealing with those sections where the pre-clearance area is Canadian screening of people coming to Canada. Subclause 48(2) says:

No claim for refugee protection under section 99 of the Immigration and Refugee Protection Act may be made in a preclearance area or preclearance perimeter.

I have to say that when I read this, in reading the bill for the first time when it came out at first reading, my marginal note was, "why not?", and certainly I've seen many briefs to that extent. It doesn't make sense to me that we would do this. It certainly is an offence under our obligations and Canada's obligations under the United Nations convention on the rights of refugees to say that you can't make a claim when you're there. There's no reason for it. The purpose of the act is to deal with screening of people coming into Canada to facilitate cross-border movement. There isn't any justification under this act for restricting the rights of refugees.

The simplest thing to do with an offensive section is to delete it, and my amendment proposes that deletion.

•(1905)

The Chair: Mr. Dubé.

[Translation]

Mr. Matthew Dubé: Thank you, Mr. Chair.

This amendment is extremely important. We know that the consequences of the bill and of the agreement on permanent residents may be very significant. So I am very pleased to support Ms. May's amendment.

Ms. Elizabeth May: Thank you.

[English]

The Chair: Are there any other questions or comments? Seeing none, shall amendment PV-9 carry?

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

The Chair: We now have amendment PV-10 on the same clause.

Ms. Elizabeth May: This deals with a different aspect of the same clause, and that is the right to turn away permanent residents of Canada. Again, why would a border services officer reject a person with that status of permanent residence? The changes that I've made there are numerous, but they all go to the same point. They're all in PV-10 to ensure that permanent residents of Canada are not rejected in the pre-clearance area.

Is this one we're all going to agree to now? Does everyone agree?

An hon. member: I do.

The Chair: Monsieur Picard.

Mr. Michel Picard: Just to avoid going against immigration processes, we have to follow what's in the system from the immigration standpoint.

The Chair: Are there any other questions or comments?

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

(Clause 48 agreed to)

The Chair: Do I have unanimous consent to consider clauses 49 through 52 together?

Some hon. members: Agreed.

(Clauses 49 to 52 inclusive agreed to)

(On clause 53)

The Chair: Moving to clause 53, I would just note that amendment LIB-9 was consequential to amendment LIB-4, so no vote is required, but it has been amended.

Is there any discussion on the amended clause 53?

(Clause 53 as amended agreed to)

The Chair: I am going to attempt again, with clauses 54 through 60, do I have unanimous consent to consider them together?

Some hon. members: Agreed.

(Clauses 54 to 60 inclusive agreed to)

The Chair: We have a new clause 60.1, amendment PV-11.

Ms. Elizabeth May: Thank you, Mr. Chair.

As you can tell, my amendments have been drawn primarily from the evidence that was before the committee from the Canadian Bar Association, as well as from the British Columbia Civil Liberties Association. This is from the Canadian Bar Association, and I think it's a very sensible proposal. Honestly, I don't think it offends anything that we've negotiated with the U.S., because this is all about how we develop our approaches to travellers entering and leaving Canada.

It's a transitional provision, "The Minister of Public Safety and Emergency Preparedness must establish an advisory board that includes representatives of the legal community", and I list the various sorts of officers who could help us with this, the kind of expertise. In particular, and this was just referenced in relation to a different clause, and my colleague Matthew Dubé already mentioned this, what happens if Trump wants to search everybody's cellphones? This proposed clause anticipates that, "to develop a policy on searches of the electronic devices and documents of travellers entering or leaving Canada that preserves solicitor-client privilege and allows claims in relation to that privilege with recourse to Canadian courts."

Again, to ensure it's not a royal recommendation, subclause (2) is there just because I can't put forward things that would require payment of honoraria or stipends. It's not that I don't think these good and worthy people on this advisory board wouldn't merit them, but to keep this amendment appropriate for someone of my status before this committee, subclause (2) is just to say they're not entitled to receive remuneration as members of this advisory board. Obviously, I think it's a sensible suggestion or I wouldn't be here moving this amendment, but again, it comes directly from the recommendations from the Canadian Bar Association.

● (1910)

[Translation]

The Chair: Mr. Dubé, go ahead.

Mr. Matthew Dubé: Thank you, Mr. Chair.

I support the amendment. I would even say this matter should be debated in the house separately from Bill C-23. As both my colleague and I have mentioned this evening, despite the fact that there are ministerial directions for the agency, the reality of cell phones is rapidly evolving.

Unless I am mistaken, apart from a recent decision concerning the young man who landed in Halifax, the case law is silent on the subject. Consequently, the matter seems to merit a great deal more study, and I would even say a legislative update, which goes even further.

I support this amendment. I think it would be valid beyond Bill C-23.

[English]

The Chair: Ms. Damoff.

Ms. Pam Damoff: Mr. Dubé, I'm not supporting the amendment, because I think it does go beyond the scope of this bill. I don't necessarily disagree that we should be looking at this, but this is specific to pre-clearance locations and not all border locations. In the context of this bill, I don't think this amendment would be applicable.

The Chair: For the committee's information, I just checked with the clerk. I am not able to report this issue to the House. However, I think the committee would be well advised to take this, as advice from our colleague, as a very important future study item, not only for pre-clearance but all border crossings, pre-clearance and not pre-clearance. I think we should undertake to do a study on this issue in the fall, and we will make that undertaking to you.

Thank you for bringing forward this amendment. It may pass, but this is just in case it doesn't.

Mr. Dubé.

Mr. Matthew Dubé: I don't want to be out of order, but it would perhaps interest members to know that the ethics committee has started a similar study of privacy at the border.

That's for those who are interested in the topic. I know I certainly am.

Ms. Elizabeth May: This is not to anticipate the way this vote will go, but if I may, Mr. Chair, that was certainly the nicest rejection I've had in a very long time.

The Chair: We try to do that.

I think you have been heard. I will call the question on amendment PV-11.

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

The Chair: Thank you. We will duly note the requirement for us to dig into this issue.

Now we move to PV-12, a new Green Party amendment. Members don't have it yet. It's being distributed now. I don't have it in front of me yet, so....

● (1915)

Ms. Elizabeth May: Mr. Chair, it was submitted with all the others, but it somehow fell out. I'm not allowed to submit things at the last minute, so this was within the timelines of the coercive order passed by this committee. You all thought it was a nice thing to do, I'm sure, but it was not.

The Chair: This is a duly received amendment that is appropriate for the committee to consider.

I will just make sure it's distributed. We'll suspend for three minutes to give the committee members time to read the amendment.

● (1915)

_____ (Pause) _____

● (1915)

The Chair: Members, you will note that PV-12 is similar to NDP-11 and LIB-10. This means that if PV-12 passes, we would not consider NDP-11 or LIB-10. If it is defeated, we would consider NDP-11, but if NDP-11 passes, it automatically includes LIB-10.

Let's first deal with PV-12.

Ms. May.

Ms. Elizabeth May: Thank you.

Having prepared this amendment without knowing there would be LIB-10, I have to say that I am very heartened to see that there is such a similar amendment coming from the government benches. Mine is a bit more detailed, but essentially we are talking about a statutory review of Bill C-23.

The clauses that I have are slightly more prescriptive in that every five years, after coming into force, the minister will have an independent review. That part is very similar. The parts with regard to the provisions and administration of the act as well as causing the report to be laid before the House are also very similar to the Liberal amendment. The data in the report would include the exercise of statutory powers under this act in the pre-clearance areas, and there would also be an annual report to Parliament about this act.

So the amendments are similar, and I'm certain.... I shouldn't be so certain, but perhaps everyone will decide

● (1920)

[Translation]

that amendment PV-12 is preferable to amendment LIB-10, but I am really pleased to read amendment LIB-10.

[English]

I would now prepare for any questions or comments on amendment PV-12. This is the last of my amendments.

Again, I'm here under protest, but that doesn't mean I'm not grateful to you each personally.

The Chair: Are there any comments or questions on amendment PV-12?

Ms. Damoff.

Ms. Pam Damoff: I think this speaks so well to how the parties are thinking on this. I'm actually surprised the Conservatives didn't put this one in, too.

Voices: Oh, oh!

Ms. Pam Damoff: I think you must have.

Hon. Tony Clement: What? I missed that comment.

Ms. Pam Damoff: It wasn't bad, Tony. It wasn't bad.

Hon. Tony Clement: Okay.

Ms. Pam Damoff: I said everybody seems to be thinking along the same lines, I'm surprised you didn't put in the same amendment.

Hon. Tony Clement: I went for brevity.

Ms. Elizabeth May: He knows he can count on me. That's all.

Hon. Tony Clement: That's right.

The Chair: Are there any other comments on amendment PV-12?

Mr. Michel Picard: I have a question. How many million persons cross the border between Canada and the U.S. yearly? Would it be 12 million? How many million, ballpark?

Ms. Jill Wherrett: There are about 12 million a year.

Mr. Michel Picard: Okay. So let's say we have 12 million people crossing yearly between Canada and the U.S. Your proposed subsection 60.2(1) therefore means that we have to report on all those 12 million people. I think it was not your intention.

Ms. Elizabeth May: No, Mr. Picard, it doesn't say that. It contains data saying that 12 million people crossed, five million of them did them in pre-clearance areas, and of those five million, approximately 200,000 went to senior officers because they had trouble with it. It's a data collection exercise. It's not an individual report on 12 million travellers.

Mr. Michel Picard: You should understand that it was just one example of all the activities going under customs, so I'm going to beg you to wait for—

Ms. Elizabeth May: We could debate the point, but I think—

Mr. Michel Picard: —the next one that goes in the same sense.

[Translation]

The Chair: Mr. Arseneault, do you want to add a comment?

[English]

Mr. René Arseneault: Not to repeat what my colleague just said, but the intention of Ms. May, we all want this but, again, when you read 60.2(1)—and maybe it was not even your intention—when we say “containing data on the exercise of statutory powers under this Act”, any exercise of any power in each and every article of the act

for one passenger is data, so there could be many data per passenger. I know that was not your intention. Amendments NDP-11 and LIB-10 are there, so I'm comfortable that we could pass on to the others. But we like you.

Voices: Oh, oh!

The Chair: I would hope that we'd note in the committee's diary to do this review in five years and ensure the minister does review it. I turn to the Justice officials to ask them for at some point the list—I'm teasing—of all the independent reviews that have been required under statutes that have never been done. When I did request a list of them, it was very thick. It was literally thousands of items that were meant to be reviewed. This committee should maintain that as a requirement.

I'm going to call the question on amendment PV-12.

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

The Chair: It is defeated; however, we quickly move, and we must consider amendment NDP-11 first.

Mr. Matthew Dubé: We have that.

The Chair: Amendment NDP-11 is a new clause 62.1, so we will deal with clause 61 first.

(On clause 61)

• (1925)

Mr. Matthew Dubé: I have a comment on 61, if I may.

The Chair: Yes.

Mr. Matthew Dubé: We couldn't bring any amendments because any amendment required to fix what we disagree with or dislike in this clause would have been out order. I just want to make the comment that we continue to believe that the memoranda of understanding are not sufficient protection with regard to the changes made to the Criminal Code allowing American officers to bear arms on Canadian soil.

The Chair: Your point is taken.

(Clause 61 agreed to)

(Clause 62 agreed to)

The Chair: Now we move to amendment NDP-11. I would just note that it will be the motion under consideration, and if it is defeated or adopted, amendment LIB-10 would not be able to be moved.

[Translation]

Mr. Dubé, go ahead.

[English]

Monsieur Dubé should be happy at this moment.

[Translation]

Mr. Matthew Dubé: I imagine this is a bit like getting a participation medal. However, I think this is a very important point. I want to echo the comments Ms. May made by saying that, despite disagreeing quite significantly on certain aspects, we nevertheless have a mechanism that I hope will be very useful.

If conditions ever become conducive to perhaps renegotiating a better agreement, the fact that we have the power to review it and to move ahead can only have a salutary impact on Canadians' rights and the evolution of this program.

[English]

The Chair: I suspect there is much harmony on NDP-11.

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

The Chair: Mr. Dubé, you earned your salary tonight.

LIB-10 is struck.

(Clauses 63 to 65 inclusive agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the schedule carry?

Some hon. members: Agreed.

The Chair: Shall the preamble carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: We'll have a recorded vote. Shall the bill as amended carry?

(Bill C-23 as amended agreed to [See *Minutes of Proceedings*])

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: I believe that comes to the end of our agenda today. We have now disposed of Bill C-23, and I thank the committee.

I thank especially the officials. It has been a long meeting, and I thank you for your assistance in helping us tonight.

Ms. Dianne L. Watts: We thank you, Mr. Chair.

The Chair: The meeting is adjourned.

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