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IMMIGRATION AND REFUGEE PROTECTION ACT

Bill to Amend—Second Reading of Bill C-43—
Debate Continued

Speech by:

The Honourable Larry W. Campbell

Thursday, April 18, 2013

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BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Eaton, seconded by the Honourable Senator Comeau, for the second reading of Bill C-43, An Act to amend the Immigration and Refugee Protection Act.

Hon. Larry W. Campbell: Honourable senators, I rise today to speak to Bill C-43.

To begin, we have received a bill from the other place that, while well-intentioned, reveals little thought about possible societal consequences. In the lead-up to this bill going to the other place and as a lead-up to this bill coming from the government, five cases were cited as examples of why this bill is necessary. I would like to briefly go over each of them.

There is no question that these cases are horrific in nature and that they demand a tough and decisive response from the government. However, if honourable senators listen to these cases, I believe they will come to the same conclusion I came to; namely, government agencies had the power and the capability of dealing with each of these cases but did not do so.

There are a number of reasons I wish to highlight. Clearly, in one case, they simply missed the fact that the person was in custody for three years. In another case, there was an adjudicator who clearly was not paying attention to what was going on. There was the case of a gentleman from Calgary who came to Canada as a young person. He was convicted of two counts of trafficking cocaine and was also convicted of assault with a weapon. It was alleged that he was a high-ranking member in a gang, although there were no convictions for this. At the end of the day, there was no concrete evidence supplied. I would suggest to honourable senators that two counts of trafficking in cocaine and a count of assault with a weapon should result in more than just a slap on the wrist. In fact, if someone is in this position within the criminal system, they should probably not be getting out and they should be having it reviewed.

• (1440)

A second case involves a gentleman who came from Eastern Europe. He had been convicted 100 times in 17 years and had a 30-month fraud conviction. Well, the act states now that if one has a conviction that is two years, one does not have a right to go to the appeal. Clearly, this case could have been dealt with and this gentleman could have been gone a long time ago.

Another gentleman was charged with possession for the purpose of trafficking, conviction for trafficking in a controlled substance, and obstructing a peace officer. This is another case where I believe we could have dealt with this issue while the person was in custody.

The last case is a gentleman who was convicted of knifing a woman and got 18 months in jail. He ended up going before the review commission, and the review commission said this person could stay in Canada. Two days later, he assaulted his wife seriously. Again, this person was in and out, in and out. I believe the present act gives one the ability to deal with this.

What is ignored is that there are currently 1.5 million-plus permanent residents in Canada who are realizing that entry to our country is a privilege and not a right. In fact, except for First Nations peoples, we are all immigrants, or of immigrant stock, who also started as permanent residents. All of us have little time or patience for those who abuse the privileges of this great country, and it would be foolish to suggest that there are not those who deserve to be deported for their crimes, either before or after serving a prison sentence.

I would like to review a few of the relevant issues contained in Bill C-43.

First, there are changes to the appeal division access. Currently, anyone sentenced to two years in jail can appeal to the Immigration Appeal Division. The change in this act is that anyone sentenced to six months will now be denied the ability to have an appeal.

While, as a former police officer, I am loath to delegate seriousness to offences, I would suggest to honourable senators that the following are probably not those offences that should make sure that one does not get an appeal on one's department: possession of marijuana under 30 grams or possession of hashish under 1 gram, first offence; public mischief; common assault; trespassing by night; and driving while disqualified. These are just a few of the offences that would be covered by this bill.

In speaking to government, I am asked to say, "Well, that won't happen; we are looking for the more dangerous offences." I accept that. However, anyone who fishes understands that there is such a thing as a bycatch, and that is the danger in these kinds of bills. This is a lazy bill. If I wanted this bill to reflect what I believe the government wanted, I would spell out those sections in the Criminal Code. I would point out for which sections if one is convicted of that one does not get an appeal. This bill just throws it out and says anything over six months, and the possibility of unintended consequences is very real.

More important, I would suggest to honourable senators that this will not deal with the instances of immigrants who turn out to be violent psychopaths, such as the five persons used as examples. For all these offences, the six months would now put immigrants at risk of being deported. It is possible that some immigrants with a sentence of less than six months deserve to be deported, and I do not have any issue with that. However, to get to that point, they must have the right of appeal. That simply is based in good law and in the Constitution.

For the person who committed an offence, was it a single conviction? Was it a youth, or was alcohol perhaps involved? Perhaps it was just stupidity. Is it part of an entrenched criminal lifestyle? How long has the individual been in Canada?

One of the biggest worries is that sentences across Canada are not consistent. In some provinces one will get six months for an offence, while that same offence in another province will carry two years. This is one of the difficulties with the lack of consistency.

Conditional sentences will now be included; previously they were not. A conditional sentence is one that is usually served in the community and not in jail. No conditional sentence can be given if the jail term for an offence is longer than two years, or if the Criminal Code lists the offence, or if the crime is violent.

Historically, conditional sentences are longer than an equivalent sentence for someone to be sentenced to jail. This recognizes the fact that conditional sentencing is an alternative to having someone in jail, and almost always conditional sentencing comes with riders and statements of what the person can and cannot do.

Conditional sentences are intended to reflect situations of less serious criminality and punishment. Basically, this goes back to the six months. These are offences that, for the most part, are not considered dangerous and are not considered on the high end of being dangerous.

A new one is foreign offences and convictions. This extends the denial of access to the IAD review to permanent residents convicted of foreign offences, regardless of the sentence imposed, or believed to have committed a foreign offence, even with no conviction. Bill C-43 purports to be aimed at foreign criminals committing serious crimes in Canada. If this is so, why does the bill then remove the IAD jurisdiction for permanent residents who have no inadmissibility for crimes committed in Canada? It does not seem to make any sense to me.

I would like to give honourable senators some examples of what could happen, and I am just using these as examples. Using a false or fraudulent document, under section 368 of the Criminal Code, carries a maximum potential penalty of 10 years. Let us say a 20-year-old permanent resident is convicted of using fake identification to get into a bar while visiting the U.S. It does not matter that the court in the United States only issued a \$200 fine. The Immigration and Refugee Protection Act does not require a threshold sentence, only a foreign conviction. One can see the difficulties that one could find oneself in here.

The offence of assault causing bodily harm, Criminal Code section 267(b), carries a potential penalty of 10 years' imprisonment. If the 20-year-old resident attending a British university is drunk in a bar and injures someone in a fight, the conviction triggers inadmissibility under the IRPA for a foreign conviction. Again, it does not matter that the court punishment in this case might simply be probation.

With regard to foreign offences without conviction, the IAD review is perhaps most important for removal orders based merely upon an officer's belief of the commission of a foreign offence without conviction. This information could come in any number of ways. It could come through documentation from foreign governments, from a snitch or from the immigrant speaking to the officer. I believe this is especially where an IAD review should come in, because it is not based necessarily on absolute fact; it can be based on any number of sources of information. I think that a fulsome review is necessary to ensure

that, in the absence of any record of court conviction, the evidence has been properly evaluated.

I always worry about retroactivity because it puts into play a dynamic that is not thought of at the time. If a judge was sentencing someone and that sentence would carry the possibility of the person being deported, there is a significant chance that they will keep the threshold lower than the two years or, in this case, the six years.

• (1450)

With the retroactivity, there is none of that discussion. If someone is convicted, it could have been three, four or five years ago, but we can now come back and go after them.

As for the obligation to attend a CSIS interview, I personally always believe that if CSIS invites an individual to come to talk to them, that person should go talk to them. In saying that, it is reasonable to expect security screening. If I am coming into the country, I would expect that CSIS might have an interest in me. It is reasonable for them to speak to me. It is reasonable for them to put questions to me. However, one has to remember that it does not carry an obligation to answer questions unrelated to one's own admissibility or the application. This is critical. I think most citizens found in this situation will not be thinking about admissibility or relationship when they are speaking to a CSIS officer. I would suggest that there is definitely a power position there, and so it is difficult for your average citizen to stand up to this kind of questioning. I think that this section will cause some Charter problems. Unless it is spelled out clearly, I really believe that we will have Charter problems.

The second to last one is the new authority for the minister to deny entry. This creates an unprecedented new authority for the minister to deny entry to Canada on public policy grounds, unlimited discretion to prevent the entry of individuals not otherwise inadmissible to Canada for three years at a time. In other words, on public policy grounds, someone can be kept from coming into Canada for up to three years.

I believe that the IRPA has sufficient mechanisms already in place. This invites arbitrary application and abuse. I am not necessarily calling this abuse, but I would like to refer to a case that honourable senators will probably remember.

A politician from Britain named George Galloway had particularly unsavory language and political views. He came here to speak and was refused entry. In reviewing the circumstances of the case, Justice Mosley of the Federal Court — I am starting to sound like Senator Baker here, but I will be brief — found that no formal decision had been made on admissibility but said the following about the government's argument that declaring Galloway inadmissible would be reasonable:

It is clear that the efforts to keep Mr. Galloway out of the country had more to do with antipathy to his political views than with any real concern that he had engaged in terrorism or was a member of a terrorist organization. No consideration appears to have been given to the interests of those Canadians who wished to hear Mr. Galloway speak or the values of freedom of expression and association enshrined in the Canadian Charter of Rights and Freedoms.

I think that public policy grounds are particularly vague and undefined. I believe that, if we are to go this way, we should have the grounds explicitly outlined in the law and subject to public debate and parliamentary oversight.

Last but not least is the limiting of humanitarian and compassionate relief. Basically, at the end of the day, this says that humanitarianism and compassion do not enter into these decisions. It is so un-Canadian to take those two things out of the mix when considering deportation. It seems inappropriate to prevent humanitarian consideration from overcoming admissibility based on security grounds for espionage and terrorism or for organized criminality. In those situations, I suggest that this would be an instance to see if humanity and compassion come into it.

The reality is that there is a broad spectrum of seriousness involved in any of these cases. One size does not fit all. That is why I come back to it being a lazy bill. I do not disagree with

many things being said here, but it is lazy. They did not take the time to spell it out. They did not take the time to give proper direction to those people who are responsible for immigration to Canada.

No one can argue that we all want a safe society. I do not think that there is any question about that. However, we also have to remember that Statistics Canada states that the rate of crime in Canada has been on a steady decline at the same level now as it was in 1972. We can argue about why that is, why those figures are there, but they are there. That being said, one has to question whether Bill C-43 is attempting to tackle a problem that is rare and can be dealt with under the current provisions. There is much for a committee to study on Bill C-43. I would urge honourable senators to take the time to gather all pertinent data before making a decision.

(On motion of Senator Tardif, for Senator Eggleton, debate adjourned.)
